THE GROWTH

OF

THE ENGLISH CONSTITUTION

FROM THE EARLIEST TIMES

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BY

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'Concedis justas leges et consuetudines esse tenendas, et promittis eas per te esse protegendas et ad honorem Dei roborandas, *quas vulgus elegerit* secundum vires tuas?'—ANCIENT CORONATION OATH.

'Rex habet superiorem, Deum. Item Legem, per quam factus est Rex. Item curiam suam.'—BRACTON.

'Igitur communitas regni consulatur,
Et quid universitas sentiat sciatur.'
POLITICAL POEM, *XIII Cent.*

London
MACMILLAN AND CO.
AND NEW YORK
1890

RICHARD CLAY AND SONS, LIMITED,
LONDON AND BUNGAY.

First Edition 1872, *Second Edition* 1873, *Third Edition* 1876
Reprinted 1881, 1887, 1890.

PREFACE TO THE THIRD EDITION.

THE book has been carefully revised for this Third Edition, and several new illustrations and references have been added. Since the Second Edition appeared, the great Constitutional History of Professor Stubbs has formed an epoch in the treatment of the subject. I am glad to find that its appearance has not obliged me to alter very much. I might have brought in endless references to such an unrivalled store-house of knowledge; but I thought it better to leave my own book essentially as it stood, and to change, alter, or refer only in a few specially important cases. My book will be doing its proper duty if it leads readers to the writings of a scholar of whom we may truly say that

"Non viget quidquid simile aut secundum."

SOMERLEAZE, WELLS,
April 3rd, 1876

PREFACE TO THE FIRST EDITION.

THE proverb "*qui s'excuse s'accuse*" is so regularly turned against any author who gives any account of the origin of his work that it may be well to prevent its quotation by quoting it oneself. I have to ask that these three Chapters and their accompanying Notes may not be judged by the standard of a book. If I were to write a book on the English Constitution, it would be different in form and, in many points, different in style. What the reader has here is a somewhat extended form of two Lectures given at Leeds and Bradford last January. I had thought that they might be worth printing in the shape of two magazine-papers; others thought that they might do good in their present shape. I therefore expanded the latter part of the second Lecture, which had to

be cut very short in delivery, so as to make a third Chapter, and I added such notes and references as seemed to be needed.

I say all this, in order that what I have now written may be judged by the standard of lectures, not by the standard of a book. In a popular lecture it is impossible to deal with everything with which it is desirable to deal; it is impossible to go to the bottom of those things which one picks out to deal with. It is enough—because it is all that can be done—if the choice of subjects is fairly well made, and if the treatment of those that are chosen, though necessarily inadequate, is accurate as far as it goes. Many things must be left out altogether; many things must be treated very imperfectly; the attention of the hearers must be caught by putting some things in a more highly wrought shape than one would choose at another time. The object is gained, if the lecturer awakens in his hearers a real interest in the subject on which he speaks, and if he sends them to the proper sources of more minute knowledge. If I can in this way send every one who wishes to

understand the early institutions of his country to the great work of Professor Stubbs—none the less great because it lies in an amazingly small compass—my own work will be effectually done. In Mr. Stubbs' "Documents Illustrative of English History," the ordinary student will find all that he can want to learn; while he who means to write a book, or to carry out his studies in a more minute way, will find the best of guidance towards so doing. The great documents of early English history, hitherto scattered far and wide, are now for the first time brought together, and their bearing is expounded in a continuous narrative worthy of the unerring learning and critical power of the first of living scholars.

For my own part, my object has been to show that the earliest institutions of England and of other Teutonic lands are not mere matters of curious speculation, but matters closely connected with our present political being. I wish to show that, in many things, our earliest institutions come more nearly home to us, and that they have more in common with our present political state, than

the institutions of intermediate ages which at first sight seem to have much more in common with our own. As the continuity of our national life is to many so hard a lesson to master, so the continuity of our political life, and the way in which we have so often fallen back on the very earliest principles of our race, is a lesson which many find specially hard But the holders of Liberal principles in modern politics need never shrink from tracing up our political history to its earliest beginnings. As far at least as our race is concerned, freedom is everywhere older than bondage; we may add that toleration is older than intolerance. Our ancient history is the possession of the Liberal, who, as being ever ready to reform, is the true Conservative, not of the self-styled Conservative who, by refusing to reform, does all he can to bring on destruction. One special point on which I have dwelt is the way in which our constitutional history has been perverted at the hands of lawyers It is perfectly true that the history of England must be studied in the Statute-Book, but it must be in a Statute-

Book which begins at no point later than the Dooms of Æthelberht.

As I have often had need to take facts and doctrines for granted which I believe myself to have proved in my larger works, I have in the Notes given frequent references to those works, instead of bringing in the evidence for the same things over again. And in the more modern part of the subject, I have given several extracts at full length, even from very familiar authors, because I know that a reader is often well pleased to have a striking passage set before him at once, without having to seek for it in the original. On the other hand, I have given at full length several extracts from statutes and other documents which most readers are not likely to have at hand. The historical portions of any Act of Parliament can be studied only in the Acts themselves, and not in the summaries of lawyers Legal writers and speakers seem constantly to repeat what has been said before them, without any reference to the original sources A memorable example is to be found in the assertion of

Blackstone and of a crowd of lawyers after him, in Parliament and out of Parliament, that the King or Queen is by Law Head of the Church I need hardly say that that title was used by Henry, Edward, and Mary, but that it was given up by Mary, and was not taken up again by any later Sovereign

SOMERLEAZE, WELLS,
March 25, 1872

CONTENTS.

CHAPTER I.

The *Landesgemeinden* of Uri and Appenzell—their bearing on English Constitutional History—political elements common to the whole Teutonic race—monarchic, aristocratic, and democratic elements to be found from the beginning—the three classes of men, the noble, the common freeman, and the slave—universal prevalence of slavery—the Teutonic institutions common to the whole Aryan family—witness of Homer—description of the German Assemblies by Tacitus—continuity of English institutions—English nationality assumed—Teutonic institutions brought into Britain by the English conquerors—effects of the settlement on the conquerors—probable increase of slavery—Earls and Churls—growth of the kingly power—nature of kingship—special sanctity of the King—immemorial distinction between Kings and Ealdormen—kingship not universal—names expressing kingship—beginning of kingship in England—fluctuation between Kings and Ealdormen—the kingly power strengthened by the increase of the King's territory—relations between the King and the nation—power of the Witan—right of election and deposition—growth of the kingly power by the *commendation* of the chief men—the *Comitatus* as described by Tacitus—poem on the Battle of Maldon—contrast of Roman and Teutonic feeling as to personal service—

instances of personal service in later times—personal service and the holding of land not originally connected—their union produces the feudal relation—growth of the Thegns—they supplant the Earls—effects of the change—change confirmed by the Norman Conquest. . . . . *Pp.* 1—55

CHAPTER II.

Gradual growth of the English Constitution—new laws seldom called for—importance of precedent—return to early principles in modern legislation—shrinking up of the ancient national Assemblies—constitution of the Witenagemót—the Witenagemót continued in the House of Lords—Gemóts after the Norman Conquest—the King's right of summons—Life Peerages—origin of the House of Commons—comparison of English and French national Assemblies—of English and French history generally—course of events influenced by particular men—Simon of Montfort—France under Saint Lewis—bad effect of his virtues—good effect of the vices of the Angevin Kings in England—effect of the personal character of William the Conqueror—the Normans in England gradually become English—the Angevins neither Norman nor English—their love of foreigners—struggle against the King and the Pope—national character of the English Church—separation of ecclesiastical and temporal jurisdiction under William—supremacy of the Crown—its abuse—good side of ecclesiastical claims—interference of the Popes in English affairs—the Pope and the King in league against the English Church and nation—importance of London—general growth of the towns—beginning of representation—Knights of the shire—judicial powers of Parliament—citizens and burgesses first summoned by Earl Simon—his connexion with Bourdeaux and London—Simon a foreigner—religious reverence shown to him and to other political worthies—Edward the First—the Constitution finally completed under him—nature of later changes—difference between English and

continental legislatures—system of Estates—three Estates of the Realm—no nobility in England—no separate Estate of the Clergy practically established—effects of the union of knights and citizens in one House—incidental origin of the system of two Houses—misuse of the phrase "three Estates"—growth of the House of Commons—general harmony of the two Houses—great powers of the early Parliaments—character of the fifteenth century—Parliaments less independent—narrowing of the county franchise—popular elections of Kings—signs of the importance of Parliament—character of the sixteenth century—general decay of free institutions in Europe—their preservation in England—subserviency of Parliament—its causes—effects of the personal character of Henry the Eighth—his respect for the outward forms of Law—indirect witnesses to the importance of Parliament—tampering with elections—enfranchisement of corrupt boroughs—Parliament under Elizabeth—James the First—Charles the First—nature of later changes. *Pp* 56—110

CHAPTER III.

Character of later constitutional developements—greater importance of silent changes—growth of the unwritten *Constitution* as distinguished from the written *Law*—Sir Robert Peel's vote of want of confidence—its bearings—the growth of the Constitution implies the firm establishment of the Law—relations between the Crown, the Ministry, and the Parliament—indirect exercise of parliamentary power—origin of the Ministry—recent use of the word *Government*—causes and advantages of indirect parliamentary action—growth of professional lawyers—their influence on constitutional doctrines—their reasoning mainly sound, but their premisses commonly worthless—return of modern legislation to the earliest state of things—doctrine that Parliament expires by a demise of the Crown—an inference from the doctrine about the King's writ—contrast with Old-English constitutional doctrines—doubts and difficulties

which Old-English principles would have answered—case of 1399—deposition of Richard and election of Henry—legal subtleties about the character and continuance of the Parliament—case of 1660—question as to the continuance of the Long Parliament after the execution of Charles the First—question as to the nature and powers of the Convention Parliament—the Convention declared to be a Parliament by its own act—question of 1688-9—history of the second Convention Parliament—question as to the effects of Mary's death—each of these acts a return to earlier doctrines—their value as possible precedents—modern legislation as to the demise of the Crown—Parliament no longer dissolved by it—Act of William the Third—Act of George the Third—Act of Victoria—reasonableness of this legislation—case of the *Folkland* or public land—its gradual change into *Terra Regis* or demesne land—the national revenue disposed of at the King's pleasure—return to earlier doctrines in modern practice—case of the private estates of the King—dealt with in earlier times like any other estates—doctrine that the private estates of the King merged in the demesne of the Crown—return to ancient practice by modern legislation—other cases of return to ancient principles—history of the succession to the Crown—the Crown anciently elective—preference for members of the royal family—growth of the doctrine of hereditary right—treatment of the law of succession by lawyers—twofold election of the King—his ecclesiastical coronation—the ecclesiastical election survives the civil—state of the succession in the fourteenth and fifteenth centuries—right of Parliament to dispose of the Crown—election of Henry the Eighth—settlement of the Crown by his will—usurpation of the Stewarts—their doctrine of divine right—the ancient right asserted by the election of William and Mary—the Crown made hereditary by the Act of Settlement—good side of hereditary succession in modern times—conclusion

Pp 111—159

NOTES . . . . *Pp* 161—234

THE GROWTH OF THE
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CHAPTER I.

YEAR by year, on certain spots among the dales and the mountain-sides of Switzerland, the traveller who is daring enough to wander out of beaten tracks and to make his journey at unusual seasons may look on a sight such as no other corner of the earth can any longer set before him. He may there gaze and feel, what none can feel but those who have seen with their own eyes, what none can feel in its fulness more than once in a lifetime, the thrill of looking for the first time face to face on freedom in its purest and most ancient form. He is there in a land where the oldest institutions of our race, institutions which may be traced up to the earliest times of which history or legend gives us any glimmering, still live on in their primæval

freshness He is in a land where an immemorial freedom, a freedom only less eternal than the rocks that guard it, puts to shame the boasted antiquity of kingly dynasties, which, by its side, seem but as innovations of yesterday. There, year by year, on some bright morning of the spring-tide, the Sovereign People, not entrusting its rights to a few of its own number, but discharging them itself in the majesty of its corporate person, meets in the open market-place or in the green meadow at the mountain's foot, to frame the laws to which it yields obedience as to its own work, to choose the rulers whom it can afford to greet with reverence as drawing their commission from itself Such a sight but few Englishmen have seen; to be among those few I reckon among the highest privileges of my life. Let me ask you to follow me in spirit to the very home and birth-place of freedom, to the land where we need not myth and fable to add aught to the fresh and gladdening feeling with which we for the first time tread the soil and drink in the air of the immemorial democracy of Uri (1). It is one of the opening days of May; it is the morning of Sunday; for there men deem that the better the day the better the deed; they deem that the Creator cannot be more truly honoured than in using, in His fear and in His presence, the

highest of the gifts which He has bestowed on man. But deem not that, because the day of Christian worship is chosen for the great yearly assembly of a Christian commonwealth, the more directly sacred duties of the day are forgotten Before we, in our luxurious island, have lifted ourselves from our beds, the men of the mountains, Catholic and Protestant alike, have already paid their morning's worship in God's temple. They have heard the mass of the priest or they have listened to the sermon of the pastor, before some of us have awakened to the fact that the morn of the holy day has come. And when I saw men thronging the crowded church, or kneeling, for want of space within, on the bare ground beside the open door, when I saw them marching thence to do the highest duties of men and citizens, I could hardly forbear thinking of the saying of Holy Writ, that "where the Spirit of the Lord is, there is liberty." From the market-place of Altdorf, the little capital of the Canton, the procession makes its way to the place of meeting at Bozlingen. First marches the little army of the Canton, an army whose weapons never can be used save to drive back an invader from their land (2). Over their heads floats the banner, the bull's head of Uri, the ensign which led men to victory on the fields of Sempach and

Morgarten. And before them all, on the shoulders of men clad in a garb of ages past, are borne the famous horns, the spoils of the wild bull of ancient days, the very horns whose blast struck such dread into the fearless heart of Charles of Burgundy (3). Then, with their lictors before them, come the magistrates of the commonwealth on horseback (4), the chief magistrate, the Landammann, with his sword by his side. The people follow the chiefs whom they have chosen to the place of meeting, a circle in a green meadow, with a pine-forest rising above their heads and a mighty spur of the mountain range facing them on the other side of the valley. The multitude of freemen take their seats around the chief ruler of the commonwealth, whose term of office comes that day to an end. The Assembly opens; a short space is first given to prayer, silent prayer offered up by each man in the temple of God's own rearing Then comes the business of the day. If changes in the law are demanded, they are then laid before the vote of the Assembly, in which each citizen of full age has an equal vote and an equal right of speech. The yearly magistrates have now discharged all their duties; their term of office is at an end; the trust which has been placed in their hands falls back into the hands of those by whom it was given, into the hands of the

sovereign people. The chief of the commonwealth, now such no longer, leaves his seat of office and takes his place as a simple citizen in the ranks of his fellows. It rests with the free-will of the Assembly to call him back to his place, or to set another there in his stead. Men who have neither looked into the history of the past, nor yet troubled themselves to learn what happens year by year in their own age, are fond of declaiming against the caprice and ingratitude of the people, and of telling us that under a democratic government neither men nor measures can remain for an hour unchanged. The witness alike of the present and of the past is an answer to baseless theories like these. The spirit which made democratic Athens year by year bestow her highest offices on the patrician Periklês and the reactionary Phôkiôn (5) still lives in the democracies of Switzerland, alike in the Landesgemeinde of Uri and in the Federal Assembly at Bern The ministers of Kings, whether despotic or constitutional, may vainly envy the sure tenure of office which falls to the lot of those who are chosen to rule by the voice of the people. Alike in the whole Confederation and in the single Canton reelection is the rule, the rejection of the out-going magistrate is the rare exception (6) The Landammann of Uri, whom his countrymen have raised to

the seat of honour, and who has done nothing to lose their confidence, need not fear that, when he has gone to the place of meeting in the pomp of office, his place in the march homeward will be transferred to another against his will.

Such is the scene, which, save for a moment, when the world was turned upside down by the inroads of revolutionary France (7), has gone on year by year as far as history goes back in the most unchanged of European states. Let me ask you to follow me yet again to the place of assembly of a younger member of the same noble band of commonwealths (8), to pass from Uri to Appenzell, from the green meadows of Bozlingen to the hill-side market-place of Trogen. Somewhat of the pomp and circumstance which mark the assembly of Catholic and pastoral Uri is lacking in the assembly of the Protestant and industrial population of the Outer Rhodes of Appenzell. But the stamp of antiquity, the stamp of immemorial freedom, is impressed alike on the assembly and on the whole life of either commonwealth. We miss in Appenzell the solemn procession, the mounted magistrates, the military pomp, of Uri; but we find in their stead an immemorial custom which breathes perhaps more than any other the spirit of days when freedom was not a thing of course, but

a thing for which men had to give their toil and, if need be, their blood. Each man who makes his way to the Landesgemeinde of Trogen bears at his side the sword which the law at once commands him to carry and forbids him to draw (9). And in the proceedings of the Assembly itself, the men of Appenzell have kept one ancient rite which surpasses all that I have ever seen or heard of in its heart-stirring solemnity. When the newly chosen Landammann enters on his office, his first duty is to bind himself by an oath to obey the laws of the commonwealth over which he is called to rule. His second duty is to administer to the multitude before him the same oath by which he has just bound himself. To hear the voice of thousands of freemen pledging themselves to obey the laws which they themselves have made is a moment in one's life which can never be forgotten, a moment for whose sake it would be worth while to take a far longer and harder journey than that which leads us to Uri or Appenzell.

And now I may be asked why I have begun a discourse on the constitution of England with a picture of the doings of two small commonwealths whose political and social state is so widely different from our own. I answer that I have done so because my object is, not merely to speak of the

constitution of England in the shape which the changes of fourteen hundred years have at last given it, but to trace back those successive changes to the earliest times which either history or tradition sets before us In the institutions of Uri and Appenzell, and in others of the Swiss Cantons which have never departed from the primæval model, we may see the institutions of our own forefathers, the institutions which were once common to the whole Teutonic race, institutions whose outward form has necessarily passed away from greater states, but which contain the germs out of which every free constitution in the world has grown. Let us look back to the earliest picture which history can give us of the political and social being of our own forefathers. In the Germany of Tacitus we have the picture of the institutions of the Teutonic race before our branch of that race sailed from the mouths of the Elbe and the Weser to seek new homes by the Humber and the Thames. There, in the picture of our fathers and brethren seventeen hundred years back, the free Teutonic Assembly, the armed Assembly of the whole people, is set before us, well-nigh the same, in every essential point, as it may still be seen in Uri, Unterwalden, Glarus, and Appenzell. One point however must be borne in mind. In

the assemblies of those small Cantons it is only the most democratic side of the old Teutonic constitution which comes prominently into sight. The commonwealth of Uri, by the peculiar circumstances of its history, grew into an independent and sovereign state. But in its origin it was not a nation, it was not even a tribe ([10]). The Landesgemeinden of which I have been speaking are the Assemblies, not of nations but of districts; they answer in our own land, not to the Assemblies of the whole kingdom, but to the lesser Assemblies of the shire or the hundred. But they are not on that account any the less worthy of our notice; they do not on that account throw any the less light on that common political heritage which belongs alike to Swabia and to England. In every Teutonic land which still keeps any footsteps of its ancient institutions, the local divisions are not simply administrative districts traced out for convenience on the map. In fact, they are not divisions at all; they are not divisions of the kingdom, but the earlier elements out of whose union the kingdom grew. Yorkshire, by that name, is younger than England, but Yorkshire, by its elder name of Deira, is older than England ([11]) And Yorkshire or Deira itself is younger than the smaller districts of which it is made up, Craven, Cleveland, Holderness, and others.

The Landesgemeinde of Uri answers, not to an Assembly of all England, not to an Assembly of all Deira, but to an Assembly of Holderness or Cleveland. But in the old Teutonic system the greater aggregate was simply organized after the model of the lesser elements out of whose union it was formed. In fact, for the political unit, for the atom which joined with its fellow atoms to form the political whole, we must go to areas yet smaller than those of Holderness or Uri That unit, that atom, the true kernel of all our political life, must be looked for in Switzerland in the *Gemeinde* or *Commune*; in England—smile not while I say it—in the parish vestry ([12]).

The primitive Teutonic constitution, the constitution of the Germans of Tacitus, the constitution which has lingered on in a few remote corners of the old German realm, is democratic, but it is not purely democratic. Or rather it is democratic, purely democratic, in the truer, older, and more honourable sense of that much maligned word; it is not purely democratic in that less honourable, but purely arbitrary, sense which is often put upon it in modern controversy. Democracy, according to Periklês, is a government of the whole people, as opposed to oligarchy, the government of only a part of the people ([13]). A government which vests

all power in any one class, a government which shuts out any one class, whether that class be the highest or the lowest, does not answer the definition of Periklês; it is not a government of the whole but only of a part; it is not a democracy but an oligarchy (14). Democracy, in the sense of Periklês, demands that every freeman shall have a voice in the affairs of the commonwealth; it does not necessarily demand that every freeman should have an equal voice. It does not forbid the existence of magistrates clothed with high authority and held in high reverence, nor does it forbid respect for ancient birth or even an attachment to an hereditary line of rulers. The older school of English constitutional writers delighted to show that the English Constitution contained a monarchic, an aristocratic, and a democratic element, and that the three were wrought together in such true and harmonious proportion that we could enjoy the good side of all the three great forms of government without ever seeing the evil side of any of them. These worthy speculators were perhaps a little Utopian in their theories; still there is no doubt that, in every glimpse we get of old Teutonic politics, we see what we may fairly call a monarchic, an aristocratic, and a democratic element. Those earliest glimpses set before us

three classes of men as found in every Teutonic society, the noble, the common freeman, and the slave ([15]). The existence of the slave, harshly as the name now grates on our ears, is no special shame or blame to our own forefathers. Slavery, in some shape or other, has unhappily been the common law of most nations in most ages; it is a mere exception to the general rule that, partly through the circumstances of most European countries, partly through the growth of humanity and civilization, the hateful institution has, during a few centuries past, gradually disappeared from certain parts of the earth's surface. And we must not forget that, in many states of society, the doom of slavery may have been thankfully received as an alleviation of his lot by the man whose life was forfeited either as a prisoner in merciless warfare or as a wrong-doer sentenced for his crimes ([16]). But I mention the existence of slavery only that we may remember that, when we speak of freedom, freeman, democracy, and the like, we are after all speaking of the rights of a privileged class—that, whether in Athens, in Rome, or in the early Teutonic communities, there was always a large mass of human beings who had no share in the freedom, the victory, or the glory of their masters. We are now more closely concerned with those distinctions

which, from the earliest times, we find among the freemen themselves. In the Germany of Tacitus, as at this day in the democratic Cantons, the sovereign power is vested in the whole people, acting directly in their own persons. But if the sovereignty of the popular Assembly is plainly set before us, we have also no less plainly set before us the existence of a Council smaller than the popular Assembly, and also the existence of a class of nobles, the nature and extent of whose privileges are not very well defined, but who clearly had privileges of some kind or other, and whose privileges passed on by hereditary descent. Here we have an aristocratic element as distinctly marked as the democratic element which is supplied by the popular Assembly. And at the head of all we see personal chiefs of tribes and nations, chiefs bearing different titles, Kings, Dukes, or Ealdormen, who in most cases drew their title to rule from an union of birth and election, rulers whom the nation chose and whom the nation could depose, but who still were the personal leaders of the nation, its highest magistrates in peace, its highest leaders in war. Here then, besides the democratic and the aristocratic elements, we have a distinct monarchic element standing out clearly in our earliest glimpses of Teutonic political life.

King, Lords, and Commons, in their present shapes, are something comparatively recent, but we may see something which may fairly pass as the germ of King, Lords, and Commons, from the very beginning of our history.

I will even go a step further. The Constitution which I have just sketched is indeed the common possession of the Teutonic race, but it is something more. We should perhaps not be wrong if we were to call it a common possession of the whole Aryan family of mankind It is possible that we may even find traces of it beyond the bounds of the Aryan family ([17]) But I will put speculations like these aside It is enough for me that the Constitution which was the common heritage of the Teutonic race was an heritage which the Teuton shared with his kinsfolk in Greece and Italy Turn to the earliest records of European civilization. In the Homeric poems we see a constitution, essentially the same as that which is set before us in the Germany of Tacitus, established alike in the Achaian camp before Ilios, in the island realm of Ithakê, and even among the Gods on Olympos. Zeus is the King of all; but he has around him his Council of the greater Gods, and there are times when he summons to his court the whole Assembly of the Divine nation, when Gods of all

ranks gather together in the court of their chief, when, save old Ocean himself, even all the River-gods were there, and when we are specially told—a fact which might perhaps be pressed into the service of very recent controversies—that not one of the Nymphs stayed away ([18]). If we come down to earth, we find the King of Men as the common leader of all, but we find him surrounded by his inner Council of lesser princes and captains. And on great occasions, Agamemnôn on earth, like Zeus in heaven, gathers together the general Assembly of freeborn warriors, an assembly in which, if debate was mainly confined to a few eloquent leaders, the common freeman, the undistinguished citizen and soldier, had at least the right of speaking his mind as to the proposals of his chiefs by loud applause or by emphatic silence ([19]). Nor is this picture confined to the host in battle array beneath the walls of Ilios; we must remember that in all early societies the distinction between soldier and civilian is unknown; the army is the nation, and the nation is the army. The same picture which the Iliad sets before us as the constitution of the Achaian army is set before us in the glimpses of more peaceful life which we find in the Odyssey as being no less the constitution of every Hellenic commonwealth on its own soil. Every-

where we find the same three elements, the supreme leader or King, the lesser chiefs who form his Council, and the final authority of all, the general Assembly of the freemen ([20]). We see the same in every glimpse which history or legend gives us of the political state of Rome and the other old Italian commonwealths ([21]). Everywhere we find the King, the Senate, the Assembly of the people; and the distribution of powers is not essentially changed when the highest personal authority is transferred from the hands of a King chosen for life to the hands of Consuls chosen for a year ([22]). The likeness between the earliest political institutions of the Greek, the Italian, and the Teuton is so close, so striking in every detail, that we can hardly fail to see in it possession handed on from the earliest times, a possession which Greek, Italian, and Teuton already had in the days before the separation, in those unrecorded but still authentic times when Greek, Italian, and Teuton were still a single people speaking a single tongue.

I have referred more than once to the picture of our race in its earliest recorded times, as set before us by the greatest of Roman historians in the Germany of Tacitus. Let me now set before you some special points of his description in his

own words as well as I am able to clothe them in an English dress ([23]).

"They choose their Kings on account of their nobility, their leaders on account of their valour. Nor have the Kings an unbounded or arbitrary power, and the leaders rule rather by their example than by the right of command; if they are ready, if they are foreward, if they are foremost in leading the van, they hold the first place in honour. . . On smaller matters the chiefs debate, on greater matters all men; but so that those things whose final decision rests with the whole people are first handled by the chiefs . . . . The multitude sits armed in such order as it thinks good; silence is proclaimed by the priests, who have also the right of enforcing it. Presently the King or chief, according to the age of each, according to his birth, according to his glory in war or his eloquence, is listened to, speaking rather by the influence of persuasion than by the power of commanding. If their opinions give offence, they are thrust aside with a shout; if they are approved, the hearers clash their spears. It is held to be the most honourable kind of applause to use their weapons to signify approval. It is lawful also in the Assembly to bring matters for trial and to bring charges of capital crimes. . . . In the same

assembly chiefs are chosen to administer justice through the districts and villages. Each chief in so doing has a hundred companions of the commons assigned to him, as at once his counsellors and his authority. Moreover they do no matter of business, public or private, except in arms."

Here we have a picture of a free commonwealth of warriors, in which each freeman has his place in the state, where the vote of the general Assembly is the final authority on all matters, but where both hereditary descent and elective office are held in high honour. We see also in a marked way the influence of personal character and of the power of speech; we see the existence of local divisions, local assemblies, local magistrates; in a word, we see in this picture of our forefathers in their old land, seventeen hundred years ago, the germs of all the institutions which have grown up step by step among ourselves in the course of ages. And a Swiss of the democratic Cantons would see in it, not merely the germs of his constitution, but the living picture of the thing itself.

This immemorial Teutonic constitution was the constitution of our forefathers in their old land of Northern Germany, before they made their way into the Isle of Britain. And that constitution, in all its essential points, they brought with

them into their new homes, and there, transplanted to a new soil, it grew and flourished, and brought forth fruit richer and more lasting than it brought forth in the land of its earlier birth. On the Teutonic mainland, the old Teutonic freedom, with its free assemblies, national and local, gradually died out before the encroachments of a brood of petty princes (24). In the Teutonic island it has changed its form from age to age; it has lived through many storms and it has withstood the attacks of many enemies, but it has never utterly died out. The continued national life of the people, notwithstanding foreign conquests and internal revolutions, has remained unbroken for fourteen hundred years. At no moment has the tie between the present and the past been wholly rent asunder; at no moment have Englishmen sat down to put together a wholly new constitution in obedience to some dazzling theory. Each step in our growth has been the natural consequence of some earlier step; each change in our law and constitution has been, not the bringing in of anything wholly new, but the developement and improvement of something that was already old. Our progress has in some ages been faster, in others slower; at some moments we have seemed to stand still, or even to go back; but the great march of political developement has

never wholly stopped; it has never been permanently checked since the day when the coming of the Teutonic conquerors first began to change Britain into England. New and foreign elements have from time to time thrust themselves into our law; but the same spirit which could develope and improve whatever was old and native has commonly found means sooner or later to cast forth again whatever was new and foreign. The lover of freedom, the lover of progress, the man who has eyes keen enough to discover real identity under a garb of outward unlikeness, need never shrink from tracing up the political institutions of England to their earliest shape. The fourteen hundred years of English history are the possession of those who would ever advance, not the possession of those who would stand still or go backwards The wisdom of our forefathers was ever shown, not in a dull and senseless clinging to things as they were at any given moment, but in that spirit, the spirit alike of the true reformer and the true conservative, which keeps the whole fabric standing, by repairing and improving from time to time whatever parts of it stand in need of repair or improvement. Let ancient customs prevail (25); let us ever stand fast in the old paths. But the old paths have in England ever been the paths of

progress; the ancient custom has ever been to shrink from mere change for the sake of change, but fearlessly to change whenever change was really needed. And many of the best changes of later times, many of the most wholesome improvements in our Law and Constitution, have been only the casting aside of innovations which have crept in in modern and evil times. They have been the calling up again, in an altered garb, of principles as old as the days when we get our first sight of our forefathers in their German forests Changed as it is in all outward form and circumstance, the England in which we live, has, in its true life and spirit, far more in common with the England of the earliest times than it has with the England of days far nearer to our own. In many a wholesome act of modern legislation we have gone back, wittingly or unwittingly, to the earliest principles of our race. We have advanced by falling back on a more ancient state of things; we have reformed by calling to life again the institutions of earlier and ruder times, by setting ourselves free from the slavish subtleties of Norman lawyers, by casting aside as an accursed thing the innovations of Tudor tyranny and Stewart usurpation.

I have said that the primæval Teutonic constitution was brought with them by our Teutonic

forefathers when they came as conquerors into the Isle of Britain. I will not again go into the details of the English Conquest, the settlement which gave us a new home in a new land, nor into all the questions and controversies to which the details of the English Conquest have given rise. I have spoken of them over and over again with my voice and with my pen, and I hope I may take for granted here what I have fully argued out elsewhere (26). I hope that I may be allowed to assume the plain facts of the case, without going through the details of every point. I will assume then—for it is that to which the question really comes—that England is England and that Englishmen are Englishmen. I will assume that we are not Romans or Welshmen, but that we are the descendants of the Angles, Saxons, and Jutes who came hither in the fifth and sixth centuries, of the Danes and Northmen who came hither in the ninth. I will assume that we are a people, not indeed of unmixed Teutonic blood—for no people in the world is of absolutely unmixed blood—but a people whose blood is not more mixed than that of any other nation; that Englishmen are as truly Englishmen as Britons are Britons or as High-Germans are High-Germans I will assume that what is Teutonic in us is not merely one element among others, but that it is the

very life and essence of our national being; that whatever else we may have in us, whatever we have drawn from those whom we conquered or from those who conquered us, is no co-ordinate element, but a mere infusion into our Teutonic essence; in a word, I will assume that Englishmen are Englishmen, that we are ourselves and not some other people I assume all this; if any man disputes it, if any man chooses not to be an Englishman but to be a Welshman or a Roman, I cannot argue with him now; I can only ask him to turn to the arguments which I have urged on all those points in other times and places. I assume that, as we have had one national name, one national speech, from the beginning, we may be fairly held to have an unbroken national being. And when we find a Teutonic-speaking people in Britain living under the same political and social forms as the Teutonic-speaking people of the mainland, it is surely no very rash or far-fetched inference that the tongue and the laws which they have in common are a common possession drawn from a common source; that the island colony in short came itself, and brought its laws and language with it, from the elder mother-land beyond the sea.

Our fathers then came into Britain, and they brought with them the same primæval political

system, the same distinctions of rank, the same division of political power, which they had been used to in their elder Anglian and Saxon homes. The circumstances of the Conquest would no doubt bring about some changes. It would probably tend to increase the numbers of the class of slaves. Such of the natives as were neither slain nor driven out would of course pass into that class. Especially, though there is no doubt that our forefathers brought their women with them from their own homes, there is no doubt that many British women passed into bondage, so much so that one of the common Old-English names for a female slave is *Wylne* or *Welshwoman* (27). And we may infer that this increased familiarity with slavery would tend to strengthen the custom by which freemen guilty of crimes were reduced to slavery by sentence of law. Again, I suspect that the circumstances of the Conquest did something to raise the position both of the common freeman and of the King or leader, as compared with the intermediate class of nobles. No two things are more levelling than colonization and successful warfare. The levelling effect of colonization is obvious; the levelling effect of warfare is not so obvious in modern times. In modern armies, where there is a strictly defined system of military ranks, where the

distinction of officer and private is broadly drawn, where the private soldier is little more than a machine in the hands of his commander, the effect may even be the other way. But in an earlier state of things, where victory depends on the individual prowess of each man, nothing can be more levelling than warfare. Honour and profit fall to the lot of the stoutest heart and the strongest arm, whether their owner be noble or peasant in his own land. And this would be still more the case when war and colonization went hand in hand, when success brought not only victory but conquest, when men fought, not to go back loaded with glory and plunder to their old homes, but to win for themselves new homes as the reward of their valour. On the other hand, in an early state of things personal influence is almost everything; a vigorous and popular ruler is practically absolute, because no one has any wish to withstand his will; but a weak or unpopular ruler can exercise no authority whatever. In such a state of things as this no one can so easily gain the authority of unbounded influence as the military chief who leads his tribe to victory. And again, that influence would be increased tenfold when the successful chief led them not only to victory but to conquest, when he was not only a ruler but a founder, the man who

had led his people to win for themselves a new land, to create a new state, the prize of his sword and of theirs Mere nobility of birth, however highly honoured, would be but a feeble influence compared with either of these influences above and below it. I think that we may trace something of the results of these influences in the position of the oldest English nobility. That there was a difference between the noble and the common freeman, in Old-English phrase between the *Eorl* and the *Ceorl* (28), is shown by countless allusions to the distinction in our earliest records. But it is by no means easy to say what the distinction really was. And, as we shall presently see that this primitive nobility gradually gave way to a nobility of quite another kind and founded on quite another principle, we may perhaps be inclined to think that, at least after the settlement of the English in Britain, the privileges of the *Eorlas* were little more than honorary. I need hardly say that a traditional deference for high birth, a traditional preference for men of certain families in the disposal of elective offices, may go on when birth carries with it no legal privilege whatever. Nowhere has this been more strikingly shown than in those democratic Cantons of Switzerland of which I have already spoken. In a commonwealth where magistrates

were chosen yearly, where every freeman had an equal vote in their choice, it still happened that, year after year, the representatives of certain famous houses were chosen as if by hereditary right. Such were the Barons of Attinghausen in Uri and the house of Tschudi in Glarus (29). And, whatever we say of such a custom in other ways, it was surely well suited to have a good effect on the members of those particular families; it was well suited to raise up in them a succession of men fitted to hold the high offices of the commonwealth. A man of the favoured house knew that, if he were at all worthy of a certain post of honour, he would be chosen to it before any other man; but he also knew that, if he showed himself unworthy of it, he might either fail to attain it at all or might be peacefully removed from it at the end of any twelvemonth. Such an one was surely under stronger motives to make himself worthy of the place which he hoped to fill than either the man who has to run the risk of an unlimited competition or the man who succeeds to honour and authority by the mere right of his birth.

Our fathers then came into Britain, bringing with them the three elements of the primitive constitution which we find described by Tacitus; but as I am inclined to think, the circumstances of the

Conquest did something, for a while at least, to strengthen the powers both of the supreme chief and of the general body of the people at the expense of the intermediate class of *Eorlas* or nobles. Let us first trace the origin and growth of the power of the supreme leader, in other words, the monarchic element, the kingly power. What then is a King? The question is much more easily asked than answered. The name of King has meant very different things in different times and places; the amount of authority attached to the title has varied greatly in different times and places Still a kind of common idea seems to run through all its different uses; if we cannot always define a King, we at least commonly know a King when we see him. The King has, in popular sentiment at least, a vague greatness and sanctity attaching to him which does not attach to any mere magistrate, however high in rank and authority. I am not talking of the reason of the thing, but of what, as a matter of fact, has at all times been the popular feeling. Among the heathen Swedes, it is said that, when public affairs went wrong,—that is, in the state of things when we should now turn a Minister out of office and when our forefathers some generations back would have cut off his head,—they despised any such secondary victims, and offered

the King himself in sacrifice to the Gods (30). Such a practice certainly implies that our Scandinavian kinsfolk had not reached that constitutional subtlety according to which the responsibility of all the acts of the Sovereign is transferred to some one else. They clearly did not, like modern constitution-makers, look on the person of the King as inviolable and sacred. But I suspect that the very practice which shows that they did not look on him as inviolable shows that they did look on him as sacred. Surely the reason why the King was sacrificed rather than any one else was because there was something about him which there was not about any one else, because no meaner victim would have been equally acceptable to the Gods. On the other hand—to stray for a moment beyond the range of Teutonic and even of Aryan precedent—we read that the ancient Egyptians forestalled the great device of constitutional monarchy, that their priests, in a yearly discourse, dutifully attributed all the good that was done in the land to the King personally and all the evil to his bad counsellors (31). These may seem two exactly opposite ways of treating a King; but the practice of sacrificing the King, and the practice of treating the King as one who can do no wrong, both start from the same principle, the principle that the King

is, somehow or other, inherently different from everybody else. Our own Old-English Kings, like all other Teutonic Kings, were anything but absolute rulers; the nation chose them and the nation could depose them; they could do no important act in peace or war without the national assent; yet still the King, as the King, was felt to hold a rank differing in kind from the rank held by the highest of his subjects. Perhaps the distinction mainly consisted in a certain religious sentiment which attached to the person of the King, and did not attach to the person of any inferior chief. In heathen times the Kings traced up their descent to the Gods whom the nation worshipped; in Christian times they were distinguished from lesser rulers by being admitted to their office with ecclesiastical ceremonies, the chosen of the people became also the Anointed of the Lord. The distinction between Kings and rulers of any other kind is strictly immemorial; it is as old as anything that we know of the political institutions of our race. The distinction is clearly marked in the description which I read to you from Tacitus. He distinguishes in a marked way *Reges* and *Duces,* Kings and Leaders, Kings whose claim to rule rested on their birth, and Leaders whose claim to rule rested on their personal merit. But from the same writer

we learn that, though the distinction was so early established and so well understood, it still was not universal among all the branches of the Teutonic race. Of the German nations described by Tacitus, some, he expressly tells us, were governed by Kings, while others were not (32). That is to say, each tribe or district had its own chief, its magistrate in peace and its leader in war; but the whole nation was not united under any one chief who had any claim to the special and mysterious privileges of kingship. That is to say, though we hear of kingship as far back as our accounts will carry us, yet kingship was not the oldest form of government among the Teutonic tribes. The King and his Kingdom came into being by the union of several distinct tribes or districts which already existed under distinct leaders of their own, and in our own early history we can mark with great clearness the date and circumstances of the introduction of kingship. We should be well pleased to know what were the exact Teutonic words which Tacitus expressed by the Latin equivalents *Rex* and *Dux*. As for the latter at least, we can make a fair guess. The Teutonic chief who was not a King bore the title of *Ealdorman* in peace and of *Here-toga* [illegible]. The former title needs no explanation [illegible], a [illegible]s on among us, though with somewhat

less than its ancient dignity. The other title of *Heretoga*, army-leader, exactly answering to the Latin *Dux*, has dropped out of our own language, but it survives in High-German under the form of *Herzog*, which is familiarly and correctly translated by *Duke* (33). The *Duces* of Tacitus, there can be no doubt, were *Ealdormen* or *Heretogan*. It is less clear what the title was which he intended by *Rex*. Our word *Cyning*, *King*, is common to all the existing Teutonic tongues, and we find it as far back as we can trace the English language (34). But it is not the only, nor seemingly the oldest, word to express the idea. In the oldest monument of Teutonic speech, the Gothic translation of the Scriptures, the word *King*, in any of its forms, is not found. The word there used is *Thiudans* (35). And there is a third word, *Drihten*, which in English is most commonly used in a religious sense (36) I would ask you to bear with me while I plunge for a moment into some obsolete Teutonic etymologies, as I think that the analogies of these three words are not a little interesting All three names come from, or are closely connected with, words meaning the race or people. One of those words, *Cyn* or *Kin*, we still keep in modern English with no change of sound and with very little change of meaning res Now whether the word *Cyning*, which in isame wiened

form has become *King*, comes straight from the English word *Cyn*, is a matter of dispute among comparative philologers; but in any case the two words come from the same root. Let no one delude you into thinking that *King* has anything to do with the *canning* or *cunning* man. The man who first said that it had had simply not learned his Old-English grammar (37). I will not say positively whether *Cyning* comes straight from the substantive *Cyn* or from the adjective *Cyne*—whether it is to be taken as "the noble one," or whether, as *ing* is the Teutonic patronymic, *Cyning* from *Cyn* is to be taken as the offspring of the people—or whether our *Cyning* is to be held as cognate with the Sanscrit *Ganaka*, which means father. In all of these cases alike the word *Cyning* comes from the same original root as *Cyn*, the Latin *Genus*, and the Greek γένος (38). Now the other two names, *Thiudans* or *Theoden*, and *Drihten*, have dropped out of our language, and so have the two words with which they are connected, just as *Cyning* is connected with *Cyn*. *Thiudans* or *Theoden* comes from *Thiuda* or *Theod*, also meaning *people*, a word which you will recognise in many of the old Teutonic names, *Theodric*, *Theodberht*, *Theodbald*, and the like. So *Drihten* either comes straight from *Driht*, a family or company, or else, just like *Cyn*

and *Cyne*, from an adjective *driht* meaning noble or lordly. All these three names expressing kingship have thus to do with words meaning the race or people. They imply the chief of a people, something more than the chief of a mere tribe or district. Now in our Old-English Chronicles, when they tell how the first English conquerors, Hengest and Horsa, settled in Kent, they do not call them *Cyningas* but *Heretogan*, Leaders or Dukes. It is not till after some victories over the Britons that we hear that Hengest took the *rice* or kingdom, and that his son Æsc is called *King*. So in Wessex, the first conquerors Cerdic and Cynric are called *Ealdormen* when they land; but, when they had established a settled dominion at the expense of the Welsh, we read that they too took the *rice*, and the leaders of the West-Saxons are henceforth spoken of as Kings (39). It is plain then that the first leaders of the English settlements in Britain, when they came over, bore only the lowlier title of *Heretoga* or *Ealdorman*; it was only when they had fought battles and found themselves at the head of a powerful and victorious settlement on the conquered soil that they were thought worthy of the higher title of Kings And we may further believe that, after all their exploits, they would not have been thought

worthy of it, if they had not been held to come of the blood of the Gods, of the divine stock of Woden.

We thus see that kingship in the strict sense of the word, as distinguished from the government of Dukes or Ealdormen, had its beginning among the English in Britain, not in the very first moment of the Conquest, but in the years which immediately followed it, within the lifetime of the first generation of conquerors. The same distinction which we find among the Angles and Saxons we find also among the kindred nations of Scandinavia When the Danes and Northmen began those invasions which led to such important settlements in Northern and Eastern England, we always find two marked classes of leaders, the Kings and the *Jarls*, the same word as *Eorl.* Of these the *Jarls* answer to the English *Ealdormen* (40). The distinction is again clearly marked when we read that the Old-Saxons, the Saxons of the mainland, were ruled, not by Kings, but by what our Latin writer is pleased to call *Satraps*—that is, of course, *Dukes* or *Ealdormen* (41). But it is yet more strongly marked in several accounts where we read of nations which had been united under Kings falling back again upon the earlier dominion of these smaller local chiefs. Thus the Lombards in Italy, who had been led by Kings to their great conquest

are said for a while to have given up kingly government, and to have again set up a rule of independent Dukes. So the West-Saxons in our own island are said at one time to have cast away kingly government, and to have in the like sort fallen back on the rule of independent *Ealdormen* (42). In all these cases, we should be glad to know more clearly than we do what was the exact distinction between the *King* and the *Duke* or *Ealdorman*. But it is plain that the King was the representative of a closer national unity, while the Ealdorman represented the tendency of each tribe or district to claim independence for itself. The government of the Ealdorman may not have been less effective than that of the King. If we remember the distinction drawn by Tacitus as to the respective qualifications for the two offices, we may even believe that the rule of the Ealdorman may have been the more effective. But we may be sure that the Ealdorman was felt to be, in some way or other, less distant from the mass of his people than the King was; the place of King could be held only by one of the stock of Woden; the place of Ealdorman, it would seem, was open to any man who showed that he possessed the gifts which were needed in a leader of men.

Kingship thus became the law of all the Teuto-

nic tribes which settled in Britain and whose union made up the English nation. That union, we must always remember, was very gradual. Step by step, smaller Kings or independent Ealdormen admitted the supremacy of a more powerful King. Then, in a second stage, the smaller state was absolutely incorporated with the greater. Its ruler now, if he continued to rule at all, ruled no longer as an independent or even as a vassal sovereign, but as a mere magistrate, acting by the deputed authority of the sovereign of whom he held his office (43). The settlement made by Cerdic and Cynric on the southern coast grew, step by step, by the incorporation of many small kingdoms and independent Ealdormanships, into the lordship of the whole Isle of Britain, into the immediate kingship of all its English inhabitants. The Ealdorman of a corner of Hampshire thus grew step by step into the King of the West-Saxons, the King of the Saxons, the King of the English, the Emperor of all Britain, the lord, in later times, of a dominion reaching into every quarter of the world (44). But the point which now concerns us is that, with each step in the growth of the King's territorial dominion, his political authority within that dominion has grown also. The change from an Ealdorman to a King, the change from a heathen King to a Christian

King crowned and anointed, doubtless did much to raise the power and dignity of the ruler who thus at each change surrounded himself with new titles to reverence. But this was not all. The mere increase in the extent of territorial dominion would at each step work most powerfully to increase the direct power of the King, and still more powerfully to increase the vague reverence which everywhere attaches to kingship. In Homer we read of Kings, some of whom were "more kingly," more of Kings, than others. So it was among ourselves. A King who reigned over all Wessex was more of a King than a King who reigned only over the Isle of Wight, and a King who reigned over all England was more of a King than a King who reigned only over Wessex (45). The greater the territory over which a King reigns the less familiar he becomes to the mass of his people; he is more and more shrouded in a mysterious awe; he is more and more looked on as a being of a different nature from other men, of a different nature even from other civil magistrates and military leaders, however high their authority and however illustrious their personal character. Such a separation of the King from the mass of his people may indeed, in some states of things, lead, not to the increase, but to the lessening of his

practical power. He may become in popular belief too great and awful for the effectual exercise of power, and, by dint of his very greatness, his practical authority may be transferred to his representatives who govern in his name. He may be surrounded with a worship almost more than earthly, while the reality of power passes to a Mayor of the Palace, or is split up among the satraps of distant provinces ([46]). But, with a race of vigorous and politic Kings ruling over a nation whose tendencies are to closer unity and not to wider separation, each step in the territorial growth of the kingdom is also a step in the growth, not only of the formal dignity, but of the practical authority of the King. The King of the English, who in the eleventh century held the direct sovereignty of all England, the over-lordship of all Britain, was a very different person from his forefather who in the sixth century deemed that another victory over the Briton, the acquisition of another strip of British territory, another hundred, it may be, of modern Hampshire, had made him great enough to change his title of Ealdorman for that of King. Such a King was every inch a King; his personal character was of the highest moment for the good or evil fortune of his kingdom. His will counted for much in the making of the laws by

which his people were to be governed, and in the disposal of honours and offices among those who were to govern under him. But yet he was not a despot; men never forgot that the King was what his name implied, the representative, the impersonation, the offspring, of the people. It was from the choice of the people that he received his authority to rule over them, a choice limited under all ordinary circumstances to the royal house, but which, within that house, was not tied down by a blind regard to any particular law of succession. It was a choice which at any time could fix itself on the worthiest man of the royal house, and which, when the royal house failed to supply a fitting candidate, could boldly fix itself on the worthiest man of the whole people (47). And those from whom the King first drew his power ever shared with him in its exercise. The laws, the grants, the appointments to offices, which the King made, needed the assent of the people in their national Assembly, the gathering of the Wise Men of the whole land (48). And those who gave him his power and who guided him in its exercise could also, when need so called, take away the power which they had given. At rare intervals—for it is only at rare intervals that so great a step is likely to be taken—has the English nation exercised

its highest power by taking away the Crown from Kings who were unworthy to wear it. I speak not of acts of violence or murder, or of processes which, though clothed under legal form, were without precedent in our history. I speak not of the secret death of Henry the Sixth or of the open execution of Charles the First. I speak of the regular process of the Law. In Northumberland the right of deposition was exercised with special frequency (49). But I will speak only of that direct and unbroken line of Kings who from Kings of the West-Saxons grew into the Kings of the English. Six times at least, in the space of nine hundred years, from Sigeberht of Wessex to James the Second, has the Great Council of the Nation thus put forth the last and greatest of its powers (50). The last exercise of this power has made its future exercise needless. All that in old times was to be gained by the deposition of a King can now be gained by a vote of censure on a Minister, or, in the extremest case, by his impeachment.

But, besides that growth of the King's power which followed naturally on the growth of the King's dominions, another cause was busily at work which clothed him with a personal influence which was of almost greater moment than his political authority. To a large portion of his sub-

jects, to all the men of special wealth or power, the King gradually became, not only King but *lord*, his subjects gradually became, not only his subjects but his *men*. These names may need some explanation, and I will again go back to Tacitus as our starting-point. Side by side with the political community, the King, the Nobles, the popular Assembly, all of them strictly political powers, he describes another institution, a relation in itself not political but purely personal, but which gradually became of the highest political moment. This was the institution of the *comitatus*, the system of personal relation between a man and his lord, a relation of faithful service on one side, of faithful protection on the other. Let us again hear the words of the great Roman interpreter of our own earliest days (51).

"It is no shame among the Germans to be seen among the companions (*comites*) of a chief. And there are degrees of rank in the companionship (*comitatus*), according to the favour of him whom they follow; and great is the rivalry among the companions which shall stand highest in the favour of his chief, and also among the chiefs which shall have the most and the most valiant companions . . . When they come to battle, it is shameful for the chief to be surpassed in valour; it is shame-

ful for his companions not to equal the valour of their chief. It is even a badge of disgrace for the remainder of life if a man comes away alive from the field on which his chief has fallen. To guard, to defend him, to assign their own valiant deeds to his credit, is their first religious duty. The chiefs fight for victory; the companions fight for their chief."

This is the description given by a Roman historian of the second century; let me set beside it the words of an English poet of the tenth. He is describing the battle of Maldon in 991, which was fought by the East-Saxons under their Ealdorman Brihtnoth against the invading Northmen The Ealdorman has been killed; two of his followers have fled, one of them on the Ealdorman's horse, and every word that is put into the mouth of his faithful companions turns upon the personal tie between them and their lord (52)

"Thereon hewed him
The heathen soldiers;
And both the warriors
That near him by-stood
Ælfnoth and Wulfmær both,
Lay there on the ground
By their lord;
Their lives they sold.
There bowed they from the fight
That there to be would not;

There were Odda's bairns
First in flight;
Godric from battle went,
And the good man forsook
That to him ofttimes
Horses had given.
He leapt on the horse
That his lord had owned,
On the housings
That it not right was."

Presently we read of the deeds done by his Thegns over his body;

"There was fallen
The folk's Elder,
Æthelred's Earl;
All there saw
Of his hearth's comrades
That their lord lay dead.
Then there went forth
The proud Thanes,
The undaunted men
Hastened gladly;
They would there all
One of two things,
Either life forsake,
Or the loved one wreak"

Then one of the Thegns speaks;

"Neither on that folk
Shall the Thanes twit me
That I from this host
Away would go
To seek my home,

Now mine Elder lieth
Hewn down in battle;
To me is that harm most;
He was both my kinsman
And my lord."

Then another speaks in answer;

"How thou, Ælfwine, hast
All our Thanes
In need-time cheered.
Now our lord lieth,
The Earl on the earth,
That of us each one
Others should embolden,
Warmen to the war,
That while we weapons may
Have and hold,
The hard falchion,
Spear and good sword."

Then another speaks;

"I this promise
That I hence nill
Flee a footstep,
But will further go,
To wreak in the fight
My lord and comrade.
Nor by Stourmere
Any steadfast hero
With words need twit me
That I lordless
Homeward should go,
And wend from the fight."

The story goes on a little later;

"Rath was in battle
Offa hewn down,
Yet had he furthered
That his lord had pledged,
As he ere agreed
With his ring-giver
That they should both
To the borough ride
Hale to home,
Or in the host cringe
On the slaughter place,
Of their wounds die.
He lay thane-like
His lord hard by."

Lastly another Thegn speaks;

"Mind shall the harder be,
Heart shall the keener be,
Mood shall the more be,
As our main lessens.
Here lies our Elder,
All down hewn.
A good man in the dust;
Ever may he groan
Who now from this war-play
Of wending thinketh.
I am old of life;
Hence stir will I not,
And I by the half
Of my lord,
By such a loved man
To lie am thinking."

This institution of military companionship seems to have struck Tacitus with some amazement He says that this kind of personal relation was among the Germans not thought shameful. This was the natural feeling of a Roman. The duty of a Roman citizen was wholly towards the state. The state might be represented either by a responsible magistrate or by an irresponsible Emperor; in either case obedience was due to the representative of the state; but there was no personal relation to the man. The old Roman institution of patron and client, which was so like the German *comitatus*, had pretty well died out by the time of Tacitus, and it had at no time been entered into by men of high rank (53). What amazed Tacitus was that among the Germans the noblest in birth and exploits were not looked on as dishonoured by entering the service of a personal lord. To Tacitus himself Trajan was the chief magistrate of the Roman commonwealth, the chief commander of the Roman army; he was a personal master to none but his slaves and freedmen (54). It was only in a much later stage of the Roman Empire that personal service in the court and household of the Emperor began to be looked on as honourable (55). But among the Teutonic nations the personal relation coloured everything;

personal service towards a King or other chief was honourable from the beginning; the proudest nobles of Europe have down to this day thought themselves honoured by filling offices about the persons of Emperors, Kings, and other princes which Tacitus would have deemed beneath the dignity of any Roman citizen. We are now accustomed to see this kind of service paid in the case of royal personages; but only a few centuries back men of any rank deemed themselves honoured by paying the like service to men of the rank next above their own, or even to men of their own rank who had the start of them in age and reputation. The knight was served by his esquire and the master by his scholar; and the same principle, laid aside everywhere else, lingers on in what is undoubtedly a trace of the Teutonic *comitatus*, the fagging of our public schools Now the political effect of the existence of the principle of personal service, the institution of the *comitatus*, alongside of the primitive political community, was most important in our early history. The personal relation went far to swallow up the purely political one. To enter the service of a chief became so established a practice that at last it was deemed that it was the part of every man to "seek a lord," as the phrase was, to commend himself, to

put himself under the protection of some man more powerful than himself (56). The *man* owed faithful service to his *lord;* the lord owed faithful protection to his man. The very word *Lord,* in its older and fuller form *Hlaford,* implies the rewards which the lord bestowed on his faithful man. The word is in some sort a puzzling one; but there can be no doubt that it is connected with *hláf, loaf,* and that its general meaning is *the giver of bread* (57). Now herein lurks something which has greatly affected all later political and social arrangements. The institution of the *comitatus* in its first state had nothing whatever to do with the holding of land. But the *man* looked for reward of his faithful service at the hands of his *lord;* he looked for the bread of which his lord's title proclaimed him as the giver. There was of course no form of reward, no form of *bread,* so convenient or so honourable as that of a grant of land to be held as the reward of past and the condition of future service. Moreover, the custom of granting out lands to be held by the tenure of military service had become common in the later days of Roman power (58). Such lands were of course held, not of the Emperor as a personal lord, but of the Roman Commonwealth of which he was the head and representative. But the custom of holding lands by

military service easily fell in with the Teutonic institution of personal service, and the union of the two in the same person produced that feudal relation which has had such an important bearing on all political and social life through the whole of the middle ages and down to our own time. The land granted by the lord to his man, or the land which the man agreed to hold as if it had been so granted, might be a kingdom held of the Emperor or the Pope, or it might be the smallest estate held of a more powerful neighbour. In either case, such a holding by military service was a *fief*, and from the institution of such fiefs the so-called Feudal System, with all its manifold workings for good and for evil, had its rise. But so far as the Feudal System existed, either in England or in any other country, it existed wholly as a system which had grown up by the side of an earlier system which it wholly or partially displaced. The feudal tenant, holding his land of a lord by military service gradually supplanted, wholly or partially, in most countries of Europe, the *allodial* holder who held his land of no other man, and who knew no superior but God and the Law (59). In England this change took place only gradually and partially; the Norman Conquest and the events which followed it, and the subtle legal theories which

then came into vogue, greatly strengthened one side of the feudal idea as regarded the mere tenure of land. But, on the other hand, the vigorous rule of the Norman and Angevin kings, and especially the legislation of the two great Henries saved England from those political developements of feudalism which grew up in other lands. The Feudal System, as something spreading into every corner of the land, and affecting every relation of life, never obtained the same complete establishment in England which it did in some continental countries.

But it is only indirectly that my subject has anything to do with the Feudal System, and especially with its social working. I have to do with the *comitatus*, out of which the feudal relation grew, mainly in another aspect equally indirect, namely the way in which it affected our earliest political institutions. It gave us a new form of nobility, a nobility of office and of personal relation to the King, instead of a nobility founded on birth only. It gave us a nobility of *Thegns*, which gradually supplanted the earlier nobility of the *Eorls*. As the royal power and dignity grew, it came to be looked on as the highest honour to enter into the personal service of the King. Two results followed; service towards the King, a place, that is, in the King's *comi-*

tatus, became the badge and standard of nobility (60) And it greatly strengthened the power of the King that he stood to all the chief men of his kingdom in the relation, not only of a political ruler, but of a personal lord, a lord to whose service they were bound by a personal tie, and of whom they held their lands as the gift of his personal bounty. It marks perhaps a decline from the first idea of the *comitatus* that the old word *Gesith*, *companion*, answering exactly to the Latin *Comes* used by Tacitus, was supplanted by the name *Thegn*, literally *servant* (61). But when personal service was deemed honourable, the name of servant was no degradation, and the name *Thegn* became equivalent to the older *Eorl*. The King's Thegn, the men who held their land of the King and who were bound to him by the tie of personal service, formed the highest class of nobility. The Thegns of inferior lords, of Bishops and Ealdormen, formed a secondary class. A nobility of this kind, there can be no doubt, was so far more liberal than the elder nobility of birth that admission to it was not forbidden to men of lower degree. The *Ceorl*, the ordinary freeman, could not in strictness become an *Eorl*, for the simple reason that he could not change his forefathers; but he might, and he often did, become a *Thegn* (62). But, on the other hand, such a

nobility, while it made it easier for the common freemen to rise, tended to lower the condition of those among common freemen who did not rise. For the very reason that the barrier of birth is one which cannot be passed, it is in some respects less irksome than the barrier of wealth or office. The privileges of a strictly hereditary nobility are much more likely to sink into mere honorary distinctions than the privileges of a nobility whose rank is backed by the solid advantages of office and of a personal relation to the sovereign.

The tendency then of the first six hundred years after the settlement of the English in Britain was to increase the power of the Crown, to depress the lower class of freemen, to exchange a nobility of birth for a nobility of personal service to the King. That is to say, England had, before the Norman Conquest, already begun to walk, though with less speed than most other nations, in the path which led to the general overthrow of liberty throughout Europe. The foreign invasion which for a moment seemed to have crushed her freedom for ever did in truth only lead to its new birth, to its fresh establishment in forms better fitted to the altered state of things, forms better fitted to be handed on to later times, forms better fitted to preserve the well-being of a great nation, than those

forms of the old Teutonic community which still linger on in those remote corners of the world which I spoke of at my beginning. That momentary overthrow, that lasting new birth, will be the subject of my second chapter. I will now only call you to bear in mind that England has never been left at any time without a National Assembly of some kind or other. Be it Witenagemót, Great Council, or Parliament, there has always been some body of men claiming, with more or less of right, to speak in the name of the nation. And bear too in mind that, down at least to the Norman Conquest, the body which claimed to speak in the name of the nation was, at all events in legal theory, the nation itself. This is a point on which I mean again to speak more fully; I would now simply suggest the thought, new perhaps to many, that there was a time when every freeman of England, no less than every freeman of Uri, could claim a direct voice in the councils of his country. There was a time when every freeman of England could raise his voice or clash his weapon in the Assembly which chose Bishops and Ealdormen and Kings, when he could boast that the laws which he obeyed were laws of his own making, and that the men who bore rule over him were rulers of his own choosing. Those days are gone, nor need we

seek to call them back. The struggles of ages on the field and in the Senate have again won back for us the selfsame rights in forms better suited to our times than the barbaric freedom of our fathers. Yet it is well that we should look back to the source whence comes all that we boast of as our own possession, all that we have handed on to our daughter commonwealths in other continents. Let us praise famous men and our fathers that begat us. Let us look to the rock whence we were hewn and to the hole of the pit whence we were digged. Freedom, the old poet says, is a noble thing (63); it is also an ancient thing. And those who love it now in its more modern garb need never shrink from tracing back its earlier forms to the first days when history has aught to tell us of the oldest life of our fathers and our brethren.

CHAPTER II.

In my first chapter I dealt mainly with those political institutions of the earliest times—institutions common to our whole race, institutions which still live on untouched among some small primitive communities of our race—out of which the still living Constitution of England grew. It is now my business, as the second part of my subject, to trace the steps by which that Constitution grew out of a political state with which at first sight it seems to have so little in common. My chief point is that it did thus, in the strictest sense, grow out of that state. Our English Constitution was never made, in the sense in which the Constitutions of many other countries have been made. There never was any moment when Englishmen drew out their political system in the shape of a formal document, whether as the carrying out of any abstract political theories or as the imitation of the past or present system of any other nation.

There are indeed certain great political documents, each of which forms a landmark in our political history. There is the Great Charter, the Petition of Right, the Bill of Rights. But not one of these gave itself out as the enactment of anything new. All claimed to set forth, with new strength, it might be, and with new clearness, those rights of Englishmen which were already old. In all our great political struggles the voice of Englishmen has never called for the assertion of new principles, for the enactment of new laws; the cry has always been for the better observance of the laws which were already in force, for the redress of grievances which had arisen from their corruption or neglect (1). Till the Great Charter was wrung from John, men called for the laws of good King Eadward. And when the tyrant had unwillingly set his seal to the ground-work of all our later Law, men called for the stricter observance of a Charter which was deemed to be itself only the laws of Eadward in a newer dress (2). We have made changes from time to time; but they have been changes which have been at once conservative and progressive—conservative because progressive, progressive because conservative. They have been the application of ancient principles to new circumstances; they have been the careful repairs of an

old building, not the pulling down of an old building and the rearing up of a new. The life and soul of English law has ever been precedent; we have always held that whatever our fathers once did their sons have a right to do again. When the Estates of the Realm declared the throne of James the Second to be vacant, they did not seek to justify the act by any theories of the right of resistance, or by any doctrines of the rights of man. It was enough that, three hundred years before, the Estates of the Realm had declared the throne of Richard the Second to be vacant (3). By thus walking in the old paths, by thus hearkening to the wisdom of our forefathers, we have been able to change whenever change has been needed, and we have been kept back from changing out of the mere love of abstract theory. We have thus been able to advance, if somewhat slowly, yet the more surely; and, when we have made a false step, we have been able to retrace it. On this last power, the power of undoing whatever has been done amiss, I wish specially to insist. In tracing the steps by which our Constitution has grown into its present shape, I shall try specially to show in how many cases the best acts of modern legislation have been, wittingly or unwittingly, a falling back on the principles of our earliest times.

In my first chapter I tried to show how our fathers brought with them into the Isle of Britain those primæval institutions which were common to them with the whole Teutonic race. I tried to show how those institutions were modified in the course of time by the circumstances of the English Conquest of Britain, and by the events which followed that Conquest. I showed how the kingly power grew with every increase of the territorial extent of the kingdom; how the old nobility of birth gave way to a new nobility of personal relation to the sovereign: and how the effect of these changes seems to have been to make it easier for the individual freeman of the lower rank to rise, but at the same time to lower the position of the ordinary freemen as a class. This last change was still more largely brought about as an independent result of the same changes which tended to increase the kingly power. In a state of things where representation is unknown, where every freeman is an elector and a lawgiver, but where, if he exercises his elective and legislative rights, he must exercise them directly in his own person—in such a state of things as this every increase of the national territory makes those rights of less practical value, and causes the actual powers of government to be shut up in the hands of a smaller body.

There is no doubt that in the earliest Teutonic assemblies every freeman had his place. There is no doubt that in England every freeman kept his place in the smaller local assemblies of the *mark*, the *hundred*, and the *shire* (4). He still, where modern legislation has not wholly swept it away, keeps, as I hinted in my former lecture, some faint shadow of the old right when he gives a vote in the assembly, in which the assembly of the mark still lives on, that is, in the vestry of his parish But how as to the great assembly of all, the Assembly of the Wise, the Witenagemót of the whole realm? No ancient record gives us any clear or formal account of the constitution of that body. It is commonly spoken of in a vague way as a gathering of the wise, the noble, the great men (5). But, alongside of passages like these, we find other passages which speak of it in a way which implies a far more popular constitution. King Eadward is said to be chosen King by "all folk." Earl Godwine "makes his speech before the King and all the people of the land." Judicial sentences and other acts of authority are voted by the army, that is by the people under arms. Sometimes we find direct mention of the presence of large and popular classes of men, as the citizens of London or Winchester (6). The inference from all this is

obvious. The right of the ordinary freeman to attend, to vote—it might perhaps be nearer the truth to say to *shout* (7)—in the general Assembly of the whole realm was never formally taken away. But it was a right which, in its own nature, most men could hardly ever exercise. None but men of wealth would have the means, none but men of some personal importance would have any temptation, to take long journeys for such a purpose. It is not likely that any great multitude would, under ordinary circumstances, set off from Northern England to attend meetings which were habitually held at Westminster, Winchester, and Gloucester. It is plain that the habitual attendance would not go beyond a small body of chief men, Earls, Bishops, Abbots, the officers of the King's court, the Thegns of the greatest wealth or the highest personal influence. But it is plain that, when the heart of the nation was specially stirred by some overwhelming interest, many men would find their way to the Assembly who would not find their way to it in ordinary times. And, when the Assembly was held in a town, the citizens of that town at once formed a popular element ready on the spot. Hence we can account for the seemingly contradictory way in which the Assembly is spoken of, sometimes in language which would imply an

aristocratic body, sometimes in language which would imply a body highly democratic. It was in fact a body, democratic in ancient theory, aristocratic in ordinary practice, but to which any strong popular impulse could at any time restore its ancient democratic character (8). Acts done by a freely chosen representative body may, without much straining of language, be said to be done by the whole people. But acts done by a body not representative could never be called the acts of the whole people, unless the whole people had an acknowledged right to attend its meetings, though that right might, under all ordinary circumstances, be exercised only by a few of their number.

Out of this body, whose constitution, by the time of the Norman Conquest, had become not a little anomalous and not a little fluctuating, our Parliament directly grew. Of one House of that Parliament we may say more; we may say, not that it grew out of the ancient Assembly but that it is absolutely the same by personal identity. The House of Lords not only springs out of, it actually is, the ancient Witenagemót. I can see no break between the two. King William summoned his Witan as King Eadward had summoned them before him. In one memorable assembly of the Conqueror's reign, we read that the great men of the

realm were reinforced by the presence of the whole body of the landholders of England, whose number tradition handed down as sixty thousand (9). But, as a rule, the Great Councils for a century or more after the Norman Conquest bear the same uncertain and fluctuating character as the Gemóts of earlier days. In the constitution of the House of Lords I can see nothing mysterious or wonderful. Its hereditary character came in, like other things, step by step, by accident rather than by design. And it should not be forgotten that, as long as the Bishops keep their seats in the House, the hereditary character of the House does not extend to all its members. To me it seems simply that two classes of men, the two highest classes, the Earls and the Bishops, never lost or disused that right of attending in the National Assembly which was at first common to them with all other freemen. Besides these two classes, the King summoned other men to our early Parliaments, pretty much, it would seem, at his own pleasure. The right of the King so to do could not be denied; when all had an abstract right to attend, we cannot blame the King for specially summoning those for whose attendance he specially wished. But it would almost naturally follow that such a special summons would gradually be held to bestow an exclusive right, and that those who were

not specially summoned would soon be looked upon as having no part or lot in the matter. But it is certain that it was long before such a summons was held to confer a hereditary, or even a lasting personal right. The King did not always summon the same men to every Parliament. Besides the Earls and the Bishops, others both of the laity and the clergy were always summoned, but the list of those who were summoned, both of the laity and of the lesser ecclesiastical dignitaries, constantly varies from Parliament to Parliament (10). That the personal summons conveyed an exclusive hereditary right was one of those devices of lawyers of which so many have crept into our constitution. When the notion of hereditary right had once established itself, the formal creation of peerages by patent was a natural stage. Looking at the matter from this historical point of view, it seems to me simply wonderful how any one can doubt the power of the Crown to create life-peerages, or to regulate the tenure or succession of a peerage in any way that it thinks good.

The House of Lords then, I do not hesitate to say, represents, or rather is, the ancient Witenagemót. An assembly in which at first every freeman had a right to appear has, by the force of circumstances, step by step, without any one moment of

sudden change, shrunk up into an Assembly wholly hereditary and official, an Assembly to which the Crown may summon any man, but to which, it is now strangely held, the Crown cannot refuse to summon the direct heirs of any man whom it has once summoned. As in most other things, the tendency to shrink up into a body of this kind began to show itself before the Norman Conquest, and was finally confirmed and established through the results of the Norman Conquest. But the special function of the body into which the old national Assembly has changed, the function of the "other House," the Upper House, the House of Lords as opposed to the House of Commons, could not show itself till a second House of a more popular constitution had arisen by its side. Like everything else in our English polity, both Houses in some sort came of themselves. Neither of them was the creation of any ingenious theorist, though we need not doubt that many of the several steps in the growth of each were, each in its own time, the work of practical statesmanship. Our forefathers had no theories, but men, each in his own generation, had eyes keen enough to see that such and such a change in detail would get rid of such and such an immediate evil, or would bring with it such and such an immediate advantage.

Nay more, it has sometimes happened that a change which was brought in with an evil intent has in the end worked for good. Measures which were taken with a view of strengthening the power of the Crown have come in the end to widen the rights of the people. On the other hand, institutions which once answered a good and needful purpose have sometimes, through change of times, changed their nature, and have become instruments of evil instead of good. But in neither case were the institutions of our fathers the work of abstract theory. They have therefore lived on, and they have borne good fruit. Our national Assembly has changed its name and its constitution, but its corporate identity has lived on unbroken. We can therefore at any moment reform without destroying. In France, on the other hand, institutions have been the work of abstract theory; they have been the creations, for good or for evil, of the minds of individual men. The English Parliament is immemorial; it grew step by step out of the older order of things. In France the older order of things utterly vanished; the ground lay open for the creation of a wholly new institution, and the States-General were called into being at the bidding of Philip the Fair (11). Englishmen in the fourteenth and fifteenth centuries had no theories

of the rights of man or of universal humanity. But when they saw a practical grievance, they called for its redress Frenchmen in the fourteenth and fifteenth centuries had theories as magnificent as any that have been put forth in the eighteenth or the nineteenth And they had even then already learned to do deeds of blood in the name of freedom and philanthropy [12]. Therefore French institutions have not lasted The States-General lived but a fitful life from century to century, and they perished for ever in the Great Revolution. Since that time no French institution, no form either of the legislative or of the executive power, has been able to keep up a continuous being of twenty years This difference has not been owing to any lack of great men or of noble purposes on the part of our continental neighbours. It has been owing, partly, we may believe, to differences in the inborn character of the two nations, partly to differences in the course taken by their several histories. In France the Kings gradually swept away all traces of older free institutions, and established a simple despotism in the Crown [13]. The French therefore have been left without any traditional foundation to build on. In all their changes for good or for evil they have been driven to build afresh from the beginning. Our Kings never wholly wiped out our

called together was probably a fiscal one; it was a safe and convenient way of getting money. The notion of summoning a small number of men to act on behalf of the whole was doubtless borrowed from the practice in judicial proceedings and in inquests and commissions of various kinds, in which it was usual for certain select men to swear on behalf of the whole shire or hundred. We must not forget, though it is a matter on which I have no time to insist here, that our judicial and our parliamentary institutions are closely connected, that both sprang out of the primitive Assemblies, that things which now seem so unlike as our popular juries and the judicial powers of the House of Lords are in truth both of them fragments of the judicial powers which Tacitus speaks of as being vested in those primitive Assemblies It was only step by step that the functions of judge, juror, witness, and legislator became the utterly distinct functions which they are now (39).

Thus we find the beginnings of the House of Commons, as we might have expected, in that class of its members which, for the most part, has most in common with the already established House of Lords. Thus far the developement of the Constitution had gone on in its usual incidental way. Each step in advance, however slight,

was doubtless the work of the discernment of some particular man, even though his views may not have gone beyond the compassing of some momentary advantage. But now we come to that great change, that great measure of Parliamentary Reform, which has left to all later reformers nothing to do but to improve in detail. We come to that great act of the patriot Earl which made our popular Chamber really a popular Chamber. A House of knights, of county members, would have been comparatively an aristocratic body; it would have left out one of the most healthy and vigorous, and by far the most progressive, element in the nation. When, after the fight of Lewes, Earl Simon, then master of the kingdom with the King in his safe keeping, summoned his famous Parliament, he summoned, not only two knights from every county, but also two citizens from every city and two burgesses from every borough (40). The Earl had long known the importance and value of the growing civic element in the political society of his age. When, in an earlier stage of his career, he held the government of Gascony, he had, on his return to England, to answer charges brought against him by the Archbishop of Bourdeaux and the nobles of the province. The Earl's answer was [illegible] forward a writing, giving

him the best of characters, which was signed with the common seal of the city of Bourdeaux (41). As it was in Gascony, so it was in England. The Earl was always a reformer, one who set himself to redress practical grievances, to withstand the royal favourites, to put a check on the oppressions of Pope and King. But his first steps in the way of reform were made wholly on an aristocratic basis. He tried to redress the grievances of the nation by the help of his fellow nobles only. Step by step he learned that no true reform could be wrought for so narrow a platform; and step by step he took into his confidence, first the knights of the counties, and lastly the class to whose good will he had owed so much in his earlier trial, the citizens and burgesses. Through the whole struggle they stood steadily by him; London was as firm in his cause as Bourdeaux had been, and its citizens fought and suffered and triumphed with him on the glorious day of Lewes (42). By a bold and happy innovation, he called a class which had done so much for him and for the common cause to take their place in the councils of the nation. It was in Earl Simon's Parliament of 1265 that the still abiding elements of the popular chamber, the Knights, Citizens, and Burgesses, first appeared side by side. Thus was formed that newly deve-

loped Estate of the Realm which was, step by step, to grow into the most powerful of all, the Commons' House of Parliament.

Such was the gift which England received from her noblest champion and martyr. Nor should it sound strange in our ears that her champion and martyr was by birth a stranger. We boast ourselves that we have led captive our conquerors, and that we have made them into sons of the soil as faithful as ourselves. What we have done with conquerors we have also done with peaceful settlers. In after days we welcomed every victim of oppression and persecution, the Fleming, the Huguenot, and the Palatine. And what we welcomed we adopted and assimilated, and strengthened our English being with all that was worthiest in foreign lands. So can we honour, along with the men of English birth, those men of other lands who have done for England as sons for their own mother. The Danish Cnut ranks alongside of the worthiest of our native Kings. Anselm of Aosta ranks alongside of the worthiest of our native Prelates. And so alongside of the worthiest of our native Earls we place the glorious name of Simon the Righteous. A stranger, but a stranger who came to our shores to claim lands and honours which were his lawful heritage, he became our

are under the value of forty shillings, but I ca
not think that they are now a very large or in
portant class. But, to understand the meaning
the restriction in the fifteenth century, for for
shillings we may fairly read forty pounds; ar
certainly, if we struck off the register all tho
electors whose qualification is a freehold—mu
more those whose qualification is an estate le
than a freehold—under the value of forty pound
the constituencies of our counties would be lessen
in no small degree. On the other hand, duri
the revolutionary times which followed, we mo
than once hear of direct appeals to the peop
which remind us of days far earlier. Edwa
the Fourth and Richard the Third were chos
Kings, or at least had their claims to the Cro
acknowledged, by gatherings of the citizens
London which remind us of the wars of Steph
and Matilda (60). Still, even in this age, the pow
of Parliament was advancing (61); the anxiety
every pretender to get a parliamentary sanction f
his claims was a sign of the growing importan
of Parliament, and we get incidental notices wh
show that a seat in the House of Commons, a
that not as a knight of a shire, but as a burgess
a borough, was now an object of ambition for m
of the class from which knights of the shire we

chosen, and even for the sons of members of the Upper House ([62]).

At last came the sixteenth century, the time of trial for parliamentary institutions in so many countries of Europe. Not a few assemblies which had once been as free as our own Parliament were, during that age, either utterly swept away or reduced to empty formalities. Then it was that Charles the Fifth and Philip the Second overthrew the free constitutions of Castile and Aragon; before long the States-General of France met for the last time before their last meeting of all on the eve of the great Revolution ([63]). In England parliamentary institutions were not swept away, nor did Parliament sink into an empty form. But, for a while, Parliaments, like all our other institutions, became perverted into instruments of tyranny. Under Henry the Eighth, Parliaments, like Judges, Juries, and ecclesiastical Synods, decreed whatever seemed good to the caprice of the despot. Why had they so fallen away from what they had been in a past age, from what they were to be again? The reason is plain; the Commons had not yet gained strength enough to act without the Lords, and the Lords had ceased to be an independent body. The old nobility had been cut off at Towton and Barnet, and the new nobility were the

abject slaves of the King to whom they owed their honours. A century later, the new nobility had inherited the spirit of the old, and the Commons had grown to the fulness of their power. Thus it came that we find in the Parliaments of the sixteenth century an abject submission to a tyrant's will, of which we find no sign in the Parliaments either of the fourteenth or of the seventeenth. Very different indeed from the Parliaments which overthrew Richard the Second and Charles the First were the Parliaments which, almost without a question, passed bills of attainder against any man against whom Henry's caprice had turned, the Parliaments which, in the great age of religious controversy, were ever ready to enforce by every penalty that particular shade of doctrine which for the moment commended itself to the Defender of the Faith, to his son or to his daughters. Why, it may be asked, in such a state of things, did not parliamentary institutions perish in England as they perished in so many other lands? It might be enough to say that no ruler had an interest in destroying institutions which he found that he could so conveniently turn to his own purposes But why did not those institutions sink into mere forms, which they certainly did not do, even in the worst times? One reason undoubtedly is that special

insular position of our country which has in so many other ways given a peculiar turn to our history. The great foe of parliamentary institutions was the introduction of standing armies But the sovereign of England, shut up within his island, had far less need of a standing army than the sovereigns of the Continent, engaged as they were in their ceaseless wars with neighbours on their frontiers. But I believe that the personal character of Henry the Eighth had a great deal to do with the final preservation of our liberties Do not for a moment fancy that I belong to that school of paradox which sets up Henry the Eighth as a virtuous and beneficent ruler. Do not think that I claim for him any feelings of direct thankfulness such as I do claim for Earl Simon and King Edward. The position of Henry is more like the position of William the Conqueror, though I certainly hold that the Conqueror was in everything the better man of the two. Both served the cause of freedom indirectly, and both served it by means of features in the personal character of each. In one respect indeed William and Henry stood in utterly different positions towards England. William was a stranger, and it was largely because he was a stranger that he was able to do us indirect good. Henry, with all his crimes, was a

thorough Englishman; throughout his reign there was a sympathy between him and the mass of his subjects, who, after all, did not greatly suffer by the occasional beheading of a Queen or a Duke. But the despotism of William and the despotism of Henry agreed in this, that each, even in his worst deeds, retained a scrupulous regard for the letter of the Law. In the case of William this is not hard to see for any one who carefully studies the records of his age (64); in the case of Henry it stands boldly proclaimed in the broadest facts of English history. While his fellow-tyrants abroad were everywhere overthrowing free institutions, Henry was in all things showing them the deepest outward respect. Throughout his reign he took care to do nothing except in outward and regular legal form, nothing for which he could not shelter himself under the sanction either of precedent or of written Law. In itself, this perversion of Law, this clothing of wrong with the garb of right, is really worse—at all events it is more corrupting—than deeds of open violence against which men are tempted openly to revolt. But such a tyranny as Henry's is one form of the homage which vice pays to virtue; the careful preservation of the outward forms of freedom makes it easier for another and happier generation again to kindle

the form into its ancient spirit and life. Every deed of wrong done by Henry with the assent of Parliament was in truth a witness to the abiding importance of Parliament; the very degradation of our ancient Constitution was a step to its revival with new strength and in a more perfect form (65).

A like witness to the importance of Parliament in this age was shown in two other very remarkable ways, whereby the power and importance of the House of Commons was acknowledged in the very act of corrupting it. One was the active interference of the Government in parliamentary elections; the other was the creation of boroughs in order to be corrupt. One needs no stronger proofs than these of the importance of the body which it was found needful thus to pack and to manage. The Crown still kept the power of summoning members from any boroughs which it thought fit, and throughout the Tudor reigns that power was freely abused by sending writs to places which were likely to return members who would be subservient to the Court (66). Thus arose many of the wretched little boroughs in Cornwall and elsewhere which were disfranchised by our successive Reform Bills. These boroughs, which always were corrupt, and which were created in order to be corrupt,

must be carefully distinguished from another class which perished with them. Many towns to which Earl Simon and King Edward sent writs decayed in process of time; sometimes they decayed positively; more commonly they decayed relatively, by being utterly outstripped by younger towns, and so losing the importance which they had once had. The disfranchisement of both classes was equally just; but the different history of the two classes should be carefully borne in mind. It was right to take away its members from Old Sarum, but there had been a time when it was right to give Old Sarum members. In the case of a crowd of Cornish boroughs, it not only was right to take away their members, but they never ought to have had members at all (67).

It was in the days of Elizabeth that something of the ancient spirit again breathed forth It is then that we come to the beginning of that long line of parliamentary worthies which stretches on in unbroken order from her days to our own. A few daring spirits in the Commons' House now began once more to speak in tones worthy of those great Assemblies which had taught the Edwards and the Richards that there was a power in England mightier than their own (68). Under the puny successor of the great Queen the voice of freedom

was heard more loudly (69). In the next reign the great strife of all came, and a King of England once more, as in the days of Henry and Simon, stood forth in arms against his people to learn that the power of his people was a greater power than his. But in the seventeenth century, just as in the thirteenth, men did not ask for any rights and powers which were admitted to be new; they asked only for the better security of those rights and powers which had been handed on from days of old. Into the details of that great struggle and of the times which followed it is not my purpose to enter. I have traced at some length the origin and growth of our Constitution from the earliest times to its days of special trial in the days of Tudor and Stewart despotism. Our later constitutional history rather belongs to an inquiry of another kind. It is mainly a record of silent changes in the practical working of institutions whose outward and legal form remained untouched. I will therefore end my consecutive historical sketch—if consecutive it can claim to be—at the point which we have now reached. Instead of carrying on any regular constitutional narrative into times nearer to our own, I will rather choose, as the third part of my subject, the illustration of one of the special points with which I set out,

namely the power which our gradual developement has given us of retracing our steps, of falling back, whenever need calls for falling back, on the principles of earlier, often of the earliest, times. Wittingly or unwittingly, much of our best modern legislation has, as I have already said, been a case of advancing by the process of going back. As the last division of the work which I have taken in hand, I shall try to show in how many cases we have, as a matter of fact, gone back from the cumbrous and oppressive devices of feudal and royalist lawyers to the sounder, freer, and simpler principles of the days of our earliest freedom.

CHAPTER III.

IN my two former chapters I have carried my brief sketch of the history of the English Constitution down to the great events of the seventeenth century. I chose that point as the end of my consecutive narrative, because the peculiar characteristic of the times which have followed has been that so many and such important practical changes have been made without any change in the written Law, without any re-enactment of the Law, without any fresh declaration of its meaning. The movements and revolutions of former times, as I have before said, seldom professed to seek in the acknowledged Law, they rather sought its more distinct enactment, its more careful and honest administration. This was the general character of all the great steps in our political history, from the day when William of Normandy renewed the Laws of Eadward to the day when William of Orange gave his royal assent to the Bill of Rights But, though each step in our progress took the

shape, not of the creation of a new right, but of the firmer establishment of an old one, yet each step was marked by some formal and public act which stands enrolled among the landmarks of our progress. Some Charter was granted by the Sovereign, some Act of Parliament was passed by the Estates of the Realm, which set forth in legal form the nature and measure of the rights which were to be placed on a firmer ground. Since the seventeenth century things have in this respect greatly altered. The work of legislation, of strictly constitutional legislation, has never ceased; a long succession of legislative enactments stand out as landmarks of political progress no less in more recent than in earlier times. But alongside of them there has also been a series of political changes, changes of no less moment than those which are recorded in the statute-book, which have been made without any legislative enactment whatever. A whole code of political maxims, universally acknowledged in theory, universally carried out in practice, has grown up, without leaving among the formal acts of our legislature any trace of the steps by which it grew. Up to the end of the seventeenth century, we may fairly say that no distinction could be drawn between the Constitution and the Law. The prerogative of the Crown, the privilege

of Parliament, the liberty of the subject, might not always be clearly defined on every point. It has indeed been said that those three things were all of them things to which, in their own nature, no limit could be set. But all three were supposed to rest, if not on the direct words of the Statute Law, yet at least on that somewhat shadowy yet very practical creation, that mixture of genuine ancient traditions and of recent devices of lawyers, which is known to Englishmen as the Common Law. Any breach either of the rights of the Sovereign or of the rights of the subject was a legal offence, capable of legal definition and subjecting the offender to legal penalties. An act which could not be brought within the letter either of the Statute or of the Common Law would not then have been looked upon as an offence at all. If lower courts were too weak to do justice, the High Court of Parliament stood ready to do justice even against the mightiest offenders. It was armed with weapons fearful and rarely used, but none the less regular and legal. It could smite by impeachment, by attainder, by the exercise of the greatest power of all, the deposition of the reigning King. But men had not yet reached the more subtle doctrine that there may be offences against the Constitution which are no offences against the Law. They had

not learned that men in high office may have a responsibility practically felt and acted on, but which no legal enactment has defined, and which no legal tribunal can enforce. It had not been found out that Parliament itself has a power, now practically the highest of its powers, in which it acts neither as a legislature nor as a court of justice, but in which it pronounces sentences which have none the less practical force because they carry with them none of the legal consequences of death, bonds, banishment, or confiscation. We now have a whole system of political morality, a whole code of precepts for the guidance of public men, which will not be found in any page of either the Statute or the Common Law, but which are in practice held hardly less sacred than any principle embodied in the Great Charter or in the Petition of Right. In short, by the side of our written Law there has grown up an unwritten or conventional Constitution. When an Englishman speaks of the conduct of a public man being constitutional or unconstitutional, he means something wholly different from what he means by his conduct being legal or illegal. A famous vote of the House of Commons, passed on the motion of a great statesman, once declared that the then Ministers of the Crown did not possess the confidence of the House

of Commons, and that their continuance in office was therefore at variance with the spirit of the Constitution ([1]). The truth of such a position, according to the traditional principles on which public men have acted for some generations, cannot be disputed; but it would be in vain to seek for any trace of such a doctrine in any page of our written Law. The proposer of that motion did not mean to charge the existing Ministry with any illegal act, with any act which could be made the subject either of a prosecution in a lower court or of impeachment in the High Court of Parliament itself. He did not mean that they, Ministers of the Crown, appointed during the pleasure of the Crown, had committed any breach of the Law of which the Law could take cognizance, merely because they kept possession of their offices till such time as the Crown might think good to dismiss them from those offices. What he meant was that the general course of their policy was one which to a majority of the House of Commons did not seem to be wise or beneficial to the nation, and that therefore, according to a conventional code as well understood and as effectual as the written Law itself, they were bound to resign offices of which the House of Commons no longer held them to be worthy. The

House made no claim to dismiss those Ministers from their offices by any act of its own; it did not even petition the Crown to remove them from their offices. It simply spoke its mind on their general conduct, and it was held that, when the House had so spoken, it was their duty to give way, without any formal petition, without any formal command, on the part either of the House or of the Sovereign ([2]). The passing by the House of Commons of such a resolution as this may perhaps be set down as the formal declaration of a constitutional principle. But though a formal declaration, it was not a legal declaration. It created a precedent for the practical guidance of future Ministers and future Parliaments; but it neither changed the Law nor declared it. It asserted a principle which might be appealed to in future debates in the House of Commons; but it asserted no principle which could be taken any notice of by a Judge in any Court of Law It stands therefore on a wholly different ground from those enactments which, whether they changed the Law or simply declared the Law, had a real legal force, capable of being enforced by a legal tribunal. If any officer of the Crown should levy a tax without the authority of Parliament, if he should enforce martial law without the authority of Parliament, he would be guilty of

a legal crime. But, if he merely continues to hold an office conferred by the Crown and from which the Crown has not removed him, though he hold it in the teeth of any number of votes of censure passed by both Houses of Parliament, he is in no way a breaker of the written Law. But the man who should so act would be universally held to have trampled under foot one of the most undoubted principles of the unwritten but universally accepted Constitution.

The remarkable thing is that, of these two kind of hypothetical offences, the latter, the guilt os which is purely conventional, is almost as unlikely to happen as the former, whose guilt is a matter established by Law. The power of the Law is so firmly established among us that the possibility of breaches of the Law on the part of the Crown or its Ministers hardly ever comes into our heads. And conduct sinning against the broad lines of the unwritten Constitution is looked on as hardly less unlikely. Political men may debate whether such and such a course is or is not constitutional, just as lawyers may debate whether such a course si or is not legal. But the very form of the debate implies that there is a Constitution to be observed, just as in the other case it implies that there is a Law to be observed. Now this firm establish-

ment of a purely unwritten and conventional code is one of the most remarkable facts in history. It is plain that it implies the firmest possible establishment of the power of the written Law as its groundwork. If there were the least fear of breaches of the written Law on the part of the Crown or its officers, we should be engaged in finding means for getting rid of that more serious danger, not in disputing over points arising out of a code which has no legal existence. But it is well sometimes to stop and remember how thoroughly conventional the whole of our received system is. The received doctrine as to the relations of the two Houses of Parliament to one another, the whole theory of the position of the body known as the Cabinet and of its chief the Prime Minister, every detail in short of the practical working of government among us, is a matter belonging wholly to the unwritten Constitution and not at all to the written Law. The limits of the royal authority are indeed clearly defined by the written Law. But I suspect that most people have but little idea of the amount of power which the Crown still possesses by Law, and that they would be amazed to find how many things, which in our eyes would seem utterly monstrous, might still be done by royal authority without breaking the letter of the

Law. The Law indeed secures us against arbitrary legislation, against the repeal of any old laws, or the enactment of any new ones, without the consent of both Houses of Parliament (3). But it is the unwritten Constitution alone which makes it practically impossible for the Crown to refuse its assent to measures which have passed both Houses of Parliament, and which in many cases makes it almost equally impossible to refuse the prayer of an address sent up by one of those Houses only. The written Law leaves to the Crown the choice of all its ministers and agents, great and small, their appointment to office and their removal from office, as long as they commit no crime which the Law can punish, is a matter left to the personal discretion of the Sovereign The unwritten Constitution makes it practically impossible for the Sovereign to keep a Minister in office of whom the House of Commons does not approve, and it makes it almost equally impossible to remove from office a Minister of whom the House of Commons does approve (4). The written Law and the unwritten Constitution alike exempt the Sovereign from all ordinary personal responsibility (5). They both transfer the responsibility from the Sovereign himself to his agents and advisers. But the nature and extent of their responsibility

is widely different in the eyes of the written Law and in the eyes of the unwritten Constitution. The written Law is satisfied with holding that the command of the Sovereign is no excuse for an illegal act, and that he who advises the commission of an illegal act by royal authority must bear the responsibility from which the Sovereign himself is free. The written Law knows nothing of any responsibility but such as may be enforced either by prosecution in the ordinary Courts or by impeachment in the High Court of Parliament The unwritten Constitution lays the agents and advisers of the Crown under a responsibility of quite another kind. What we understand by the responsibility of Ministers is that they are liable to have all their public acts discussed in Parliament, not only on the ground of their legal or illegal character, but on the vaguest grounds of their general tendency. They may be in no danger of prosecution or impeachment; but they are no less bound to bow to other signs of the will of the House of Commons; the unwritten Constitution makes a vote of censure as effectual as an impeachment, and in many cases it makes a mere refusal to pass a ministerial measure as effectual as a vote of censure. The written Law knows nothing of the Cabinet or the Prime Minister; it knows them as

members of one or the other House of Parliament, as Privy Councillors, as holders, each man in his own person, of certain offices; but, as a collective body bound together by a common responsibility, the Law never heard of them (6). But in the eye of the unwritten Constitution the Prime Minister and the Cabinet of which he is the head form the main feature of our system of government. It is plain at a moment's glance that the practical power of the Crown is not now what it was in the reign of William the Third or even in that of George the Third. But the change is due, far less to changes in the written Law than to changes in the unwritten Constitution. The Law leaves the powers of the Crown untouched, but the Constitution requires that those powers should be exercised by such persons, and in such a manner, as may be acceptable to a majority of the House of Commons. In all these ways, in a manner silent and indirect, the Lower House of Parliament, as it is still deemed in formal rank, has become the really ruling power in the nation. There is no greater contrast than that which exists between the humility of its formal dealings with the Crown and even with the Upper House (7), and the reality of the irresistible power which it exercises over both. It is so conscious of the mighty force of

its indirect powers that it no longer cares to claim the direct powers which it exercised in former times. There was a time when Parliament was directly consulted on questions of war and peace There was a time when Parliament claimed directly to appoint several of the chief officers of state (5). There were much later times when it was no unusual thing to declare a man in power to be a public enemy, or directly to address the Crown for his removal from office and from the royal presence. No such direct exercises of parliamentary power are needed now, because the whole machinery of government may be changed by the simple process of the House refusing to pass a measure on which the Minister has made up his mind to stake his official being.

Into the history of the stages by which this most remarkable state of things has been brought about I do not intend here to enter. The code of our unwritten Constitution has, like all other English things, grown up bit by bit, and, for the most part, silently and without any acknowledged author. Yet some stages of the developement are easily pointed out, and they make important landmarks. The beginning may be placed in the reign of William the Third, the first time when we find anything at all like a *Ministry* in the modern sense Up to

that time the servants of the Crown had been servants of the Crown, each man in the personal discharge of his own office. The holder of each office owed faithful service to the Crown, and he was withal responsible to the Law; but he stood in no special fellowship towards the holder of any other office. Provided he discharged his own duties, nothing hindered him from being the personal or political enemy of any of his fellow-servants. It was William who first saw that, if the King's government was to be carried on, there must be at least a general agreement of opinions and aims among the King's chief agents in his government (9). From this beginning a system has gradually grown up which binds the chief officers of the Crown to work together in at least outward harmony, to undertake the defence of one another, and on vital points to stand and fall together. Another important stage happened in much later times, when the King ceased to take a share in person in the deliberations of his Cabinet. And I may mark a change in language which has happened within my own memory, and which, like other changes of language, is certainly not without its meaning. We now familiarly speak, in Parliament and out of Parliament, of the body of Ministers actually in power, the body known to

the Constitution but wholly unknown to the Law, by the name of "the Government." We speak of "Mr Gladstone's Government" or "Mr. Disraeli's Government." I can myself remember the time when such a form of words was unknown, when "Government" still meant "Government by King, Lords, and Commons," and when the body of men who acted as the King's immediate advisers were spoken of as "Ministers" or "the Ministry" (10).

This kind of silent, I might say stealthy, growth, has, without the help of any legislative enactment, produced that unwritten and conventional code of political rules which we speak of as the Constitution. This process I have spoken of as being characteristic of the days since the Revolution of 1688, as distinguished from earlier times. And so it undoubtedly is At no earlier time have so many important changes in constitutional doctrine and practice won universal acceptance without being recorded in any written enactment. Yet this tendency of later times is, after all, only a further developement of a tendency which was at work from the beginning. It is simply another application of the Englishman's love of precedent. The growth of the unwritten Constitution has much in common with the earlier growth of the unwritten Common Law. I have shown in earlier chapters

that some of the most important principles of our earlier Constitution were established silently and by the power of precedent, without resting on any known written enactment. If we cannot show any Act of Parliament determining the relations in which the members of the Cabinet stand to the Crown, to the House of Commons, and to one another, neither can we show any Act of Parliament which decreed, in opposition to the practice of all other nations, that the children of the hereditary Peer should be simple Commoners. The real difference is that, in more settled times, when Law was fully supreme, it was found that many important practical changes might be made without formal changes in the Law. It was also found that there is a large class of political subjects which can be best dealt with in this way by tacit understandings, and which can hardly be made the subjects of formal enactments by Law. We practically understand what is meant by Ministers having or not having the confidence of the House of Commons; we practically recognize the cases in which, as not having the confidence of the House, they ought to resign office, and the cases in which they may fairly appeal to the country by a dissolution of Parliament But it would be utterly impossible to define such cases beforehand in the terms of

an Act of Parliament. Or again, the Speaker of the House of Commons is an officer known to the Law. The Leader of the House of Commons is a person as well known to the House and to the country as the Speaker himself, and his functions are quite as well understood But of the Leader of the House of Commons the Law knows nothing It would be hopeless to seek to define his duties in any legal form; and the House itself has, before now, shrunk from recognizing the existence of such a person in any shape of which a Court of Law could take notice (¹¹).

During a time then which is now not very far short of two hundred years, the silent and extra-legal growth of our conventional Constitution has been at least as important as the actual changes in our written Law. With regard to these last, the point on which I wish chiefly to dwell is the way in which not a few pieces of modern legislation have been—whether wittingly or unwittingly I do not profess to know—a return to the simpler principles of our oldest constitution I trust to show that, in many important points, we have cast aside the legal subtleties which grew up from the twelfth century to the seventeenth, and that we have gone back to the plain common sense of the eleventh or tenth, and of times far earlier still.

In those ancient times we had already laws, but we had as yet no lawyers. We hear in early times of men who were versed above others in the laws of the land; but such special knowledge is spoken of as the attribute of age or of experience in public business, not as the private possession of a professional class ([12]). The class of professional lawyers grew up along with the growth of a more complicated and technical jurisprudence under our Norman and Angevin Kings. Now I mean no disrespect to a profession which in our present artificial state of society we certainly cannot do without; but there can be no kind of doubt that lawyers' interpretations and lawyers' ways of looking at things have done no small mischief, not only to the true understanding of our history, but to the actual course of our history itself. The lawyer's tendency is to carry to an unreasonable extent that English love of precedent which, within reasonable bounds, is one of our most precious safeguards. His virtue is that of acute and logical inference from given premisses; the premisses themselves he is commonly satisfied to take without examination from those who have gone before him. It is often wonderful to see the amazing ingenuity with which lawyers have piled together inference upon inference, starting from some purely arbitrary

assumption of their own. Each stage of the argument, taken by itself, is absolutely unanswerable, the objection must be taken earlier, before the argument begins. The reasoning is perfect, if we only admit the premisses; the unlucky thing is that the premisses will commonly be found to be historically worthless. Add to this that the natural tendency of the legal mind is to conservatism and deference to authority. This will always be the case, even with thoroughly honest men, in an age when honesty is no longer dangerous. But this tendency will have tenfold force in times when an honest setting forth of the Law might expose its author to the disfavour of an arbitrary government. We shall therefore find that the premisses from which lawyers' arguments have started, but which historical study shows to be unsound, are commonly premisses devised in favour of the prerogative of the Crown, not in favour of the rights of the people. Indeed the whole ideal conception of the Sovereign, as one, personally at least, above the Law, as one personally irresponsible and incapable of doing wrong, the whole conception of the Sovereign as the sole fountain of all honour, as the original grantor of all property, as the source from which all authority of every kind issues in the first instance, is purely a lawyer's conception.

and rests upon no ground whatever in the records of our early history (13). In later times indeed the evil has largely corrected itself; the growth of our unwritten Constitution under the hands of statesmen has done much practically to get rid of these slavish devices of lawyers. The personal irresponsibility of the Sovereign becomes practically harmless when the powers of the Crown are really exercised by Ministers who act under a twofold responsibility, both to the written Law and to the unwritten Constitution. Yet, even now, small cases of hardship sometimes happen in which some traditional maxim of lawyers, some device devised in favour of the prerogative of the Crown, stands in the way of the perfectly equal administration of justice But in several important cases the lawgiver has directly stepped in to wipe out the inventions of the lawyer, and modern Acts of Parliament have brought things back to the simpler principles of our earliest forefathers. I will wind up my sketch of our constitutional history by pointing out several cases in which this happy result has taken place.

For many ages it was a legal doctrine universally received that Parliament at once expired at the death of the reigning King. The argument by which the lawyers reached this conclusion is, like

most of their arguments, altogether unanswerable, provided only we admit their premisses. According to the lawyers' conception, whatever might be the powers of Parliament when it actually came together, however much the King might be bound to act by its advice, consent, and authority, the Parliament itself did nevertheless derive its being from the authority of the King. Parliament was summoned by the King's writ. The King might indeed be bound to issue the writs for its summons; still it was from the King's writ that the Parliament actually derived its being and its powers. By another legal assumption, the force of the King's writ was held to last only during the lifetime of the King who issued it. It followed therefore that Parliament, summoned by the King's writ and deriving its authority from the King's writ, was dissolved *ipso facto* by the death of the King who summoned it. Once admit the assumptions from which this reasoning starts, and the reasoning itself is perfect. But what is the worth of the assumptions? Let us see how this mass of legal subtlety would have looked in the eyes of a man of the eleventh century, in the eyes of a man who had borne his part in the elections of Eadward and of Harold, and who had raised his voice and clashed his arms in the great Assembly which

restored Godwine to his lands and honours ([14]). To such an one the doctrine that a national Assembly could be gathered together only by the King's writ, and the consequent doctrine that the national Assembly ceased to exist when the breath went out of the King's body, would have seemed like the babble of a madman. When was the gathering together of the national Assembly more needed, when was it called upon to exercise higher and more inherent powers, than when the throne was actually vacant, and when the Assembly of the nation came together to determine who should fill it? And how could the Assembly be gathered together by the King's writ when there was no King in the land to issue a writ? The King's writ would be, in the eyes of such a man, a convenient way in ordinary times for fixing a time and place for the meetings of the Assembly; but it would be nothing more. It would be in no sense the source of the powers of the Assembly, powers which he would look upon as derived from the simple fact that the Assembly was itself the nation. In his eyes it was not the King who created the Assembly, but the Assembly which created the King. The doctrine that the King never dies, that the throne never can be vacant, would have seemed gibberish to one who had seen the throne vacant and had

borne his part in filling it The doctrine that the King can do no wrong would have seemed no less gibberish to one who knew that he might possibly be called on to bear his part in deposing a King Three of the most famous Assemblies in English history have ever been puzzles in the eyes of mere legal interpreters; to the man of the eleventh century they would have seemed to be perfectly legal and regular, alike in their constitution and in their acts. The Assembly which in 1399 deposed Richard the Second and elected Henry the Fourth, though summoned by the King's writ, was not opened by his commission; it seems also to have shrunk from taking the name of Parliament, and to have acted only by the name of the Estates of the Realm. As an Assembly which was in some sort irregular, it seems to have shrunk from going through the usual forms of a regular Parliament, and, though it did in the end exercise the greatest of parliamentary powers, it seems to have been afraid to look its own act in the face. Richard was deposed; but his deposition was mixed up with a resignation of the Crown on his own part, and with a challenge of the Crown on the part of Henry. Then, as a demise of the Crown had taken place, it was held that the same legal consequences followed as if that demise had

been caused by the death of the King. It was held that the Parliament which had been summoned by the writ of King Richard ceased to exist when Richard ceased to be King, and, as it was not thought good to summon a new Parliament, the same Parliament was, by a legal fiction, summoned again under the writ of King Henry ([15]). All these doubts and difficulties, all these subtleties of lawyers, would have been wholly unintelligible to a man of the eleventh century. In his eyes the Witan would have come together, whether by King Richard's writ or not it mattered little; having come together, they had done the two greatest of national acts by deposing one King and choosing another; having done this, if there was any other national business to be done, there was no reason on earth why they should not go on and do it. Take again another Assembly of equal importance in our history, the Convention which voted the recall—that is, in truth, the election—of Charles the Second. That Assembly succeeded a Parliament which had ventured on a still stronger step than deposing a King, that of sending a reigning King to trial and execution ([16]). It was not held in 1649 that the Long Parliament came to an end when the axe fell on the neck of Charles the First; but the doctrine that it ought

to have done so was not forgotten eleven years later ([17]). And the Convention which was elected, as freely as any Parliament ever was elected ([18]), in answer to the vote of the expiring Long Parliament, was, because it was so elected and not in answer to the King's writ, looked on as an Assembly of doubtful validity. It acted as a Parliament; it restored the King; it granted him a revenue; and it did a more wonderful work than all, for it created itself, and passed an act declaring itself to be a lawful Parliament ([19]). Yet, after all this, it was deemed safer that the Acts of the Convention Parliament should be confirmed by its successor which was summoned in due form by the King's writ. These fantastic subtleties, subtleties worthy of the kindred device by which the first year of Charles's reign was called the twelfth, would again have been wholly unintelligible to our man of the eleventh century. He might have remembered that the Assembly which restored Æthelred—which restored him on conditions, while Charles was restored without conditions—did not scruple to go on and pass a series of the most important decrees that were passed in any of our early Assemblies ([20]). Once more again, the Convention which deposed James and elected William, seemed, like that which deposed Richard

and elected Henry, to doubt its own existence and to shrink from its own act. James was deposed; but the Assembly which deposed him ventured not to use the word, and, as an extorted abdication was deemed expedient in the case of Richard, so a constructive abdication was imagined in the case of James ([21]). And the Assembly which elected William, like the Assembly which elected Henry and that which elected Charles, prolonged its own existence by the same transparent fiction of voting itself to be a lawful Parliament. Wise men held at the time that, at least in times of revolution, a Parliament might be called into being by some other means than that of the writ of a King. Yet it was deemed that some additional security was given to the existence of the Assembly and to the validity of its acts by this second exercise of the mysterious power of self-creation ([22]). Once more in the same reign the question was brought forward whether a Parliament summoned by the joint writ of William and Mary did not expire when Mary died and William reigned alone. This subtlety was suggested only to be contemptuously cast aside; yet it may be fairly doubted whether it was not worth at least as much as any of the kindred subtleties which on the three earlier occasions were deemed of such

vast importance (23). The untutored wisdom of Englishmen, in the days when we had laws but when those laws had not yet been made the sport of the subtleties of lawyers, would have seen as little force in the difficulties which it was deemed necessary to get over by solemn parliamentary enactments as in the difficulty which neither House of Parliament thought worthy of any serious discussion.

And now what has modern legislation done towards getting rid of all these pettifogging devices, and towards bringing us back to the simpler doctrines of our forefathers? Parliament is still summoned by the writ of the Sovereign; in settled times no other way of bringing it together can be so convenient. But, if times of revolution should ever come again, we, who do even our revolutions according to precedent, shall probably have learned something from the revolutionary precedents of 1399, of 1660, and of 1688. In each later case the subtlety is one degree less subtle than in the former. The Estates of the Realm which deposed Richard were changed into a Parliament of Henry by the transparent fiction of sending out writs which were not, and could not be, followed by any real elections. The Convention which recalled or elected Charles the Second did indeed turn itself

into a Parliament, but it was deemed needful that its acts should be confirmed by another Parliament. The acts of the Convention of 1688 were not deemed to need any such confirmation. Each of these differences marks a stage in the return to the doctrine of common sense, that, convenient as it is in all ordinary times that Parliament should be summoned by the writ of the Sovereign, yet it is not from that summons, but from the choice of the people, that Parliament derives its real being and its inherent powers. As for the other end of the lawyers' doctrine, the inference that Parliament is *ipso facto* dissolved by a demise of the Crown, from that a more rational legislation has set us free altogether. Though modern Parliaments are no longer called on to elect Kings, yet experience and common sense have taught us that the time when the Sovereign is changed is exactly the time when the Great Council of the Nation ought to be in full life and activity. By a statute only a few years later than the raising of the question whether a Parliament of William and Mary did or did not expire by the death of Mary, all such subtleties were swept away. It was now deemed so needful that the new Sovereign should have a Parliament ready to act with him, that it became the Law that the Parliament which was in being at the time

of a demise of the Crown should remain in being for six months, unless it was sooner dissolved by the new Sovereign. A later statute went further still, and provided that, if a demise of the Crown should take place during the short interval when there is no Parliament in being, the last Parliament should *ipso facto* revive, and should continue in being, unless a second time dissolved, for six months more. Thus the event which, by the perverted ingenuity of lawyers, was held to have the power of destroying a Parliament, was, by the wisdom of later legislation, clothed with the power of calling a Parliament into being. Lastly, in our own days, all traces of the lawyers' superstition have been swept away, and the demise of the Crown now in no way affects the duration of the existing Parliament ([24]). Truly this is a case where the letter killeth and the spirit giveth life. The doctrine which had been inferred by unanswerable logic from an utterly worthless premiss has been cast aside in favour of the dictate of common sense. We have learned that the moment when the State has lost its head is the last moment which we ought to choose for depriving it of its body also.

Here then is a notable instance of the way in which the latest legislation of England has fallen back upon the principles of the earliest. Here is

a point on which the eleventh century and the nineteenth are of one mind, and on which the fanciful scruples of the fourteenth and the seventeenth centuries are no longer listened to. Let us take another instance. In the old Teutonic Constitution, just as in the old Roman Constitution, large tracts of land were the property of the State, the *ager publicus* of Rome, the *folkland* of England. As the royal power grew, as the King came to be looked on more and more as the impersonation of the nation, the land of the people came to be more and more looked on as the land of the King; the *folkland* of our Old-English charters gradually changed into the *Terra Regis* of Domesday (25). Like other changes of the kind, the Norman Conquest only strengthened and brought to its full effect a tendency which was already at work; but there can be no doubt that, down to the Norman Conquest, the King at least went through the form of consulting his Witan, before he alienated the land of the people to become the possession of an individual—in Old-English phrase, before he turned *folkland* into *bookland* (26). After the Norman Conquest we hear no more of the land of the people; it has become the land of the King, to be dealt with according to the King's personal pleasure. From the days of the first

William to those of the Third, the land which had once been the land of the people was dealt with without any reference to the will of the people. Under a conscientious King it might be applied to the real service of the State, or bestowed as the reward of really faithful service done to the State Under an unconscientious King it might be squandered broadcast among his minions or his mistresses (27). Now this wrong too is redressed. A custom as strong as law now requires that, at the beginning of each fresh reign, the Sovereign shall, not by an act of bounty but by an act of justice, give back to the nation the land which the nation lost so long ago. The royal demesnes are now handed over to be dealt with like the other revenues of the State, to be disposed of by Parliament for the public service (28). That is to say, the people have won back their own; the usurpation of the days of foreign rule has been swept away. We have in this case too gone back to the sound principles of our forefathers; the *Terra Regis* of the Norman has once more become the *folkland* of the days of our earliest freedom.

I will quote another case, a case in which the return from the fantasies of lawyers to the common sense of antiquity has been distinctly to the profit, if not of the abstraction called the Crown, yet

certainly to that of its personal holder. As long as the *folkland* remained the land of the people, as long as our monarchy retained its ancient elective character, the King, like any other man, could inherit, purchase, bequeath, or otherwise dispose of, such lands as were his own private property as much as the lands of other men were theirs. We have the wills of several of our early Kings which show that a King was in this respect as free as any other man (29). But as the lawyers' figment of hereditary right took root, as the other lawyers' figment also took root by which the lands of the people were held to be at the personal disposal of the King, a third figment grew up, by which it was held that the person and the office of the King were so inseparably fused into one that any private estates which the King held before his accession to the throne became *ipso facto* part and parcel of the royal demesne. As long as the Crown remained an elective office, the injustice of such a rule would have made itself plain; it would have been at once seen to be as unreasonable as if it had been held that the private estates of a Bishop should merge in the estates of his see. As long as there was no certainty that the children or other heirs of the reigning King would ever succeed to his Crown, it would have been the

height of injustice to deprive them in this way of their natural inheritance. The election of a King would have carried with it the confiscation of his private estate. But when the Crown was held to be hereditary, when the *folkland* was held to be *Terra Regis*, this hardship was no longer felt. The eldest son was provided for by his right of succession to the Crown, and the power of disposing of the Crown lands at pleasure gave the King the means of providing for his younger children Still the doctrine was none the less unreasonable; it was a doctrine founded on no ground either of natural justice or of ancient law; it was a mere inference which had gradually grown up out of mere arbitrary theories about the King's powers and prerogatives And, as the old state of things gradually came back again, as men began to feel that the demesnes of the Crown were not the private possession of the regining King, but were the true possession of the people—that is, as the *Terra Regis* again came back to its old state of *folkland*—it was felt to be unreasonable to shut out the Sovereign from a natural right which belonged to every one of his subjects. The land which, to put it in the mildest form, the King held in trust for the common service of the nation was now again employed to its proper use. It was there-

fore reasonable that a restriction which belonged to a past state of things should be swept away, and that Sovereigns who had given up an usurped power which they ought never to have held should be restored to the enjoyment of a natural right which ought never to have been taken from them As our present Sovereign in so many other respects holds the place of Ælfred rather than the place of the Richards and Henries of later times, so she again holds the right which Ælfred held, of acquiring and disposing of private property like any other member of the nation (30).

These examples are, I hope, enough to make out my case. In each of them modern legislation has swept away the arbitrary inferences of lawyers, and has gone back to those simpler principles which the untutored wisdom of our forefathers never thought of calling in question. I could easily make the list much longer. Every act which has restrained the arbitrary prerogative of the Crown, every act which has secured or increased either the powers of Parliament or the liberty of the subject, has been a return, sometimes to the letter, always to the spirit, of our earliest Law. But I would enlarge on one point only, the most important point of all, and a point in which we may at first sight seem, not to have

come nearer, but to have gone away further from the principles of early times. I mean with regard to the succession to the Crown. The Crown was of old, as I have already said, elective. No man had a right to become King till he had been called to the kingly office by the choice of the Assembly of the nation No man actually was King till he had been admitted to the kingly office by the consecration of the Church. The doctrines that the King never dies, that the throne never can be vacant, that there can be no interregnum, that the reign of the next heir begins the moment the reign of his predecessor is ended, are all figments of later times No signs of such doctrines can be found at any time earlier than the accession of Edward the First (31). The strong preference which in early times belonged to members of the kingly house, above all to the born son of a crowned King (32), gradually grew, under the influences which the Norman Conquest finally confirmed, into the doctrine of absolute hereditary right. That doctrine grew along with the general growth of the royal power; it grew as men gradually came to look on kingship as a possession held by a single man for his own profit, rather than as an office bestowed by the people for the common good of the realm. It might seem that, in this respect at least, we

have not gone forward, but that we rather have gone back. For nothing is more certain than that the Crown is more strictly and undoubtedly hereditary now than it was in the days of Normans, Angevins, or Tudors But a little thought will show that in this case also, we have not gone back but have gone forward. That is to say, we have gone forward by going back, by going back, in this case, not to the letter, but assuredly to the spirit of earlier times. The Crown is now more undoubtedly hereditary than it was in the fifteenth or sixteenth century; but this is because it is now hereditary by Law, because its powers are distinctly defined by Law. The will of the people, the source of all Law and of all power, has been exercised, not in the old form of personally choosing a King at every vacancy of the Crown, but by an equally lawful exercise of the national will which has thought good to entail the Crown on a particular family.

It was in the reign of our last elective King that the Crown first became legally hereditary. The doctrine may seem a startling one, but it is one to which an unbiassed study of our history will undoubtedly lead us. Few things are more amusing than the treatment which our early history has met with at the hands of purely legal

writers. There is something almost pitiable in the haltings and stumblings of such a writer as Blackstone, unable to conceive that his lawyer's figment of hereditary right was anything short of eternal, and yet coming at every moment across events which showed that in early times all such figments were utterly unknown (33). In early times the King was not only elected, but he went through a twofold election. I have already said that the religious character with which most nations have thought good to clothe their Kings took in England, as in most other Christian lands, the form of an ecclesiastical consecration to the kingly office. That form we still retain; but in modern times it has become a mere form, a pageant impressive no doubt and instructive, but still a mere pageant, which gives the crowned King no powers which he did not equally hold while still uncrowned. The death of the former King at once puts his successor in possession of every kingly right and power; his coronation in no way adds to his legal authority, however much it may add to his personal responsibility towards God and his people. But this was not so of old time The choice of the National Assembly gave the King so chosen the sole right to become King, but it did not make him King. The King-elect was like a Bishop-elect. The recommendation of

the Crown, the election of the Chapter, and the confirmation of the Archbishop, give a certain man the sole right to a certain see, but it is only the purely religious rite of consecration which makes him actually Bishop of it (34). So it was of old with a King. The choice of the Witan made him King-elect, but it was only the ecclesiastical crowning and anointing which made him King. And this ecclesiastical ceremony involved a further election. Chosen already to the civil office by the Nation in its civil character, he was again chosen by the Church—that is, by the Nation in its religious character, by the Clergy and People assembled in the church where the crowning rite was to be done (35). This second ecclesiastical election must always have been a mere form, as the choice of the nation was already made before the ecclesiastical ceremony began. But the ecclesiastical election survived the civil one. The state of things which lawyers dream of from the beginning is a law of strict hereditary succession, broken in upon by occasional interruptions. These interruptions, which, in the eye of history, are simply exercises of an ancient right, are, in the eyes of lawyers, revolutions or usurpations. But this state of things, a state in which a fixed rule was sometimes broken, which Blackstone dreams of in the tenth

and eleventh centuries, really did exist from the thirteenth century onwards. From the accession of Edward the First, the first King who reigned before his coronation, hereditary succession became the rule in practice. The son, or even the grandson, of the late King (36) was commonly acknowledged as a matter of course, without anything which could fairly be called an election. But the right of Parliament to settle the succession was constantly exercised, and ever and anon we come across signs which show that the ancient notion of an election of a still more popular kind had not wholly passed away out of men's minds. Two Kings were formally deposed; and, on the deposition of the second, the Crown passed, as it might have passed in ancient times, to a branch of the royal house which was not the next in lineal succession. Three Kings of the House of Lancaster reigned by a good parliamentary title, and the doctrine of indefeasible hereditary right, the doctrine that there was some virtue in a particular line of succession which the power of Parliament itself could not set aside, was first brought forward as the formal justification of the claims of the House of York (37). Those claims could not be formally justified on any showing but that of the most slavish doctrine of divine right, but it was not

on any such doctrine as that that the cause of the House of York really rested. The elaborate list of grandmothers and great-grandmothers which was brought forward to show that Henry the Fifth was an usurper would never have been heard of if the government of Henry the Sixth had not become utterly unpopular, while Richard Duke of York was the best beloved man of his time. Richard accepted a parliamentary compromise, which of course implied the right of Parliament to settle the question Henry was to keep the Crown for life, and Richard was to displace Henry's son as heir-apparent That is to say, according to a custom common in Germany, though rare in England, Richard was chosen to fill a vacancy in the throne which had not yet taken place (38) Duke Richard fell at Wakefield, in the Yorkist reading of the Law the Crown was presently forfeited by Henry, and Edward, the heir of York, had his claim acknowledged by a show of popular election which carries us back to far earlier times. The claim of Richard the Third, whatever we make of it on other grounds, was acknowledged in the like sort by what had at least the semblance of a popular Assembly (39). In short, though the hereditary principle had now taken firm root, though the disputes between the pretenders to the Crown

were mainly disputes as to the right of succession, yet the remembrance of the days when the Crown had been truly the gift of the people had not wholly passed away.

The last King who could bring even the shadow of a claim to have been chosen by the voice of the people beneath the canopy of heaven was no other than Richard the Third The last King who could bring a better claim to have been chosen by the same voice beneath the vault of the West Minster was no other than Henry the Eighth. Down to his time the old ecclesiastical form of choosing the King remained in the coronation-service, and it was not wholly out of character that Henry should issue a *congé d'élire* for his own election The device for Henry's coronation survives in his own handwriting, and, while it contains a strong assertion of his hereditary right, it also contains a distinct provision for his election by the people in ancient form (40). The claim of Henry was perfectly good, for a Parliament of his father's reign had declared that the Crown should abide in Henry the Seventh and the heirs of his body (41). But it was in his case that the hereditary and parliamentary claim was confirmed by the ancient rite of ecclesiastical election for the last time in our history. His successor was not chosen in this formal way

One reason, perhaps, for the omission of the formal election was that, in this particular case, the form was specially needless. For the right of Edward the Sixth to succeed his father was beyond all dispute. By an exercise of parliamentary power, which we may well deem strange, but which was none the less lawful, Henry had been entrusted with the power of bequeathing and entailing the Crown as he thought good. That power he exercised on behalf of his own children in order, and, failing them and their issue, on the issue of his younger sister (42). Edward, Mary, Elizabeth, therefore all reigned lawfully by virtue of their father's will. A moment's thought will show that Mary and Elizabeth could not both reign lawfully according to any doctrine of hereditary succession. On no theory, Catholic or Protestant, could both be the legitimate daughters of Henry. Parliament indeed had declared both to be illegitimate; on any theory one or the other must have been so (43). But each reigned by a perfectly lawful title, under the provisions of the Act which empowered their father to settle the succession according to his pleasure. While Elizabeth reigned, almost divine as she might be deemed to be in her own person, it was at least not held that there was any divine right in any other person to succeed her. The doctrine which came into vogue under her

successors was in her day looked upon as treasonable (44). Elizabeth knew where her strength lay; and the Stewarts knew where their strength, such as it was, lay also. In the eye of the Law the first Stewart was an usurper; he occupied the Crown in the teeth of an Act of Parliament still in force, though he presently procured a fresh Act to salve over his usurpation (45). There can be no doubt that, on the death of Elizabeth, the lawful right to the Crown lay in the house of Suffolk, the descendants of Henry's younger sister Mary. But the circumstances of the time were unfavourable to their claims; by a tacit agreement, politically convenient but quite in the teeth of the existing Law, the Crown silently passed to the King of Scots, the descendant of Henry's elder sister Margaret. She had not been named in Henry's entail; her descendants therefore, lineal heirs of William and Cerdic as they were, had no legal claim to the Crown beyond what was given them by the Act of Parliament which was passed after James was already in possession. They were therefore driven, like the Yorkists at an earlier time, to patch up the theory of the divine right of hereditary succession, in order to justify an occupation of the throne which had nothing to justify it in English Law (46).

On one memorable day a Stewart King was

reminded that an English King received his right to reign from the will of the English people. Whatever else we may say of the nature or the acts of the tribunal before which Charles the First was arraigned, it did but assert the ancient Law of England when it told how "Charles Stewart was admitted King of England, and therein trusted with a limited power, to govern by and according to the laws of the land and not otherwise." It did but assert a principle which had been acted on on fitting occasions for nine hundred years, when it told its prisoner that "all his predecessors and he were responsible to the Commons of England" Even the vote by authority of which that tribunal acted, the vote which seems so strange and daring, the vote which declared that it was high treason for a King of England to levy war against his Parliament, was little more than a translation of an earlier vote which had declared John to be a "perjured King in rebellion against his Barons" (47). Forgetful of the fate of Sigeberht and Æthelred, of John, of Edward, and of Richard, Charles ventured to ask for precedents, and told his judges that "the Kingdom of England was hereditary and not successive" (48). After a season, the intruding dynasty passed away, on that great day when the English people exercised for the last

time its ancient right of deposing and electing Kings. The Convention of which we have so often spoken, that great Assembly, irregular in the eyes of lawyers, but in truth all the more lawful because no King's writ had summoned it, cast all fantasies and subtleties to the winds by declaring that the throne was vacant. A true Assembly of the nation once more put forth its greatest power, and chose William of Orange, as, six hundred years before, another Assembly of the nation had chosen Harold the son of Godwine. The cycle had come round; the English people had won back again the rights which their fathers had brought with them from their old home beyond the sea. Nor was it without fitness that their choice went back to those kindred lands, and that a new William crossed the sea to undo, after so many ages, the wrongs which England had suffered from his namesake And now, under the rule of an elective King, England could at last afford to make her Crown strictly and permanently hereditary. The Act of Settlement, as we all know, entailed the Crown on the Electress Sophia and her heirs (49) Therefore no Kings have ever reigned by a better right than those who, by virtue of that Act, have been called to reign by the direct operation of the Law. They are in

truth Kings—*Cyningas* in the most ancient sense —whose power flows directly from the will of the nation. In the existing state of our institutions, the hereditary character of our modern kingship is no falling away from ancient principles; it in truth allows us to make a fuller application of them in another shape. In an early state of things no form of government is so natural as that which we find established among our forefathers. A feeling which was not wholly sentimental demanded that the King should, under all ordinary circumstances, be the descendant of former Kings. But a sense that some personal qualification was needed in a ruler required that the electors should have the right of freely choosing within the royal house. In days when Kings governed as well as reigned, such a choice, made with some regard to the personal qualities of the King chosen, was the best means for securing freedom and good government. Under the rule of a conventional constitution, when Kings reign but do not govern, when it is openly professed in the House of Commons that it is to that House that the powers of government have passed (50), the objects which were once best secured by making kingship elective are now best secured by making kingship hereditary. It is as the Spartan King said; by lessening the powers

of the Crown, its possession has become more lasting ([51]). A political system like ours would be inconsistent with an elective kingship. An elective King could not be trusted simply to reign; he would assuredly govern, or try to govern. We need not suppose that he would attempt any breaches of the written Law. But those powers which the written Law attaches to the Crown he would assuredly try to exercise according to his own personal views of what was right and expedient. And he would assuredly be justified in so doing. For the personal choice of a certain man to be King would in all reason be held to imply that he was personally fit for the work of government. He would be a President or Prime Minister chosen for life, one whom there would be no means of removing from office except by the most extreme and most unusual exercise of the powers of Parliament. There are states of society in which an elective Monarchy is a better kind of government than either a Commonwealth or an hereditary Monarchy. But, under the present circumstances of the civilized states of Europe and America, the choice lies between the hereditary Monarchy and the Commonwealth. The circumstances of our history have made England an hereditary Monarchy, just as the circumstances of the history of Switzer-

land have made that country a Federal Commonwealth. And no reasonable person will seek to disturb an institution which, like other English institutions, has grown up because it was wanted (52) Our unwritten Constitution, which gives us an hereditary Sovereign, but which requires his government to be carried on by Ministers who are practically chosen by the House of Commons, does in effect attain the same objects which were sought to be attained by the elective kingship of our forefathers. Our system gives the State a personal chief, a personal embodiment of the national being, which draws to itself those feelings of personal homage and personal duty which a large class of mankind find it hard to look upon as due to the more abstract ideas of Law and Commonwealth And, when the duties of constitutional royalty are discharged as our own experience tells us that they may be discharged, the feeling awakened is more than a mere sentiment; it is a rational feeling of genuine personal respect. But widely as the hereditary kingship of our latest times differs in outward form from the hereditary kingship of our earliest times, the two have points of likeness which are not shared by kingship in the form which it took in the ages between the two. In our earliest and in our latest system, the King exists for the sake

of the people; in the intermediate times it sometimes seemed that the people existed for the sake of the King. In our earliest and in our latest system, the King is clothed with an office, the duties of which are to be discharged for the common good of all In the intermediate times it sometimes seemed as if the King had been made master of a possession which was to be enjoyed for his personal pleasure and profit. In the intermediate times we constantly hear of the rights and powers of the Crown as something distinct from, and almost hostile to, the common rights of the people. In our earliest and in our latest times, the rights of the Crown and the rights of the people are the same; for it is allowed that the powers of the Crown are to be exercised for the welfare of the people by the advice and consent of the people or their representatives Without indulging in any Utopian dreams, without picturing to ourselves the England of a thousand years back as an earthly paradise, the voice of sober history does assuredly teach us that those distant times have really much in common with our own, much in which we are really nearer to them than to times which, in a mere reckoning of years, are far less distant from us Thus it is that the cycle has come round, that the days of foreign rule have been wiped out, and

that England is England once again. Our present Sovereign reigns by as good a right as Ælfred or Harold, for she reigns by the same right by which they reigned, by the will of the people, embodied in the Act of Parliament which made the crown of Ælfred and Harold hereditary in her ancestress. And, reigning by the same right by which they reigned, she reigns also for the same ends, for the common good of the nation of which the Law has made her the head. And we can wish nothing better for her kingdom than that the Crown which she so lawfully holds, which she has so worthily worn among two generations of her people, she may, like Nestor of old, continue to wear amid the well-deserved affection of a third (53).

NOTES.

CHAPTER I.

(1, p. 2.) What I say of Uri and the other democratic Cantons must not be misunderstood, as if I accepted all the now exploded dreams which made out the *Waldstadte* or Forest Cantons to have had some special origin, and some special independence, apart from the rest of Germany. The researches of modern scholars have shown, not only that the Forest Cantons were members of the Empire like their neighbours, but that various lesser lords, spiritual and temporal, held various rights within them. Their acquisition of perfect independence, even their deliverance from other lords and promotion to the state of *Reichsunmittelbarkeit* or immediate dependence on the Empire, was a work of time. Thus Uri itself, or part of it, was granted in 853 by Lewis the German to the Abbey of Nuns (*Fraumunster*) in Zurich, and it was not till 1231 that its independence of any lord but the Emperor was formally acknowledged. But the universal supremacy of the Empire in no way interfered with the internal constitution of any district, city, or principality; *nor was such interference necessarily implied even in subjection to some intermediate lord.* The rule of a female monastery especially would be very light. And from the earliest times we find both the men of Uri in general and the men of particular parts of the district (*Gemeinden, communes,* or

Dr H. von Liebenau, in *Die Tell-Sage zu dem Jahre* 1230, takes a line of his own. The results of the whole inquiry will be found in the most accessible form in M. Albert Rilliet's *Les Origines de la Confédération Suisse* (Genève et Bâle, 1868).

(2, p. 3) Individual Swiss mercenaries may doubtless still be found in foreign armies, as Italy some years back knew to her cost. But the Federal Constitution of 1848 altogether swept away the system of military capitulations which used to be publicly entered into by the Cantons.

(3, p 4.) See Johannes von Muller, *Geschichte der schweizerische Eidgenossenschaft*, Book v., c I (vol. xvi. p. 25, of his *sammtliche Werke*, Stuttgart und Tubingen, 1832, and the note in vol. xxii p. 14; or the French translation, vol viii. p. 35: Paris and Geneva, 1840) The description in Peterman Etterlin's Chronicle, p. 204 (Basel, 1752,) is worth quoting in the original. "Dann do der Hertzog von Burgunn gesach den zug den berg ab zuchen, schein die sunn gerad in sy, und glitzet als wie ein spiegel, des gelichen luyet das horn von Ury, ouch die harschorne von Lutzern, und was ein solich toffen, das des Hertzogen von Burgunn lut ein grusen darab entpfiengent, und trattent hinder sich"

(4, p. 4) The magistrates rode when I was present at the Landesgemeinden of 1863 and 1864. I trust that so good a custom has not passed away.

(5, p. 5) On the character and position of Phôkiôn, see Grote, xi. 382, xii. 481; and on the general question of the alleged fickleness of the Athenian people, see iv. 496.

(6, p. 6) Some years ago I went through all the elections to the *Bundesrath* or Executive Council in Switzerland, and found that in eighteen years it had only twice happened that a member of the Council seeking re-election had failed to

obtain it I therefore think that I was right in congratulating a member of the Federal Council, whom I had the pleasure of meeting last year, on being a member of the most permanent government in Europe.

[This was in 1871. The great question of the revision of the Federal Constitution has since led to more than one case of resignation of office, and of failure to obtain re-election, on the part of members of the Federal Council. Such changes must take place under every system when great constitutional changes are at stake. But my general proposition remains the same; the position of a Swiss Federal Councillor is certainly more stable than the position even of an English Minister, much more then than the position of a Minister in some other European kingdoms and in some British colonies.]

(7, p. 6) Under the so-called Helvetic Republic of 1798, the Cantons ceased to be sovereign States, and became mere divisions, like counties or departments. One of the earliest provisions of this constitution abolishes the ancient democracies of the Forest Cantons. "Die Regierungsform, wenn sie auch sollte verandert werden, soll allezeit eine reprasentative Demokratie sein." (See the text in Bluntschli, ii. 305.) The "reprasentative Demokratie" thus forced on these ancient commonwealths by the sham democrats of Paris was meant to exclude the pure democracy of Athens and Uri.

The Federal system was in some sort restored by the Act of Mediation (*Vermittlungsakte*) of Napoleon Buonaparte, when First Consul in 1803. See the text in Bluntschli, ii. 322.

(8, p. 6) Appenzell, though its history had long been connected with that of the Confederates, was not actually admitted as a Canton till December 1513, being the youngest of the thirteen Cantons which formed the Confederation down to 1798. See Zellweger, *Geschichte des appenzellischen Volkes*,

366, and the text in his *Urkunden*, ii. part 2, p. 481, or the older *Appenzeller Chronick* of Walser (Saint Gallen, 1740), 410, and the Act in his *Anhang*, p. 18. The frontispiece of this volume contains a lively picture of a *Landesgemeinde.* In 1597 the Canton was divided into the two Half-Cantons of *Ausser-Rhoden*, Protestant, and *Inner-Rhoden*, Catholic. See Zellweger, iii. part 2, p. 160; Walser, 553.

(9, p. 7) On armed assemblies see Norman Conquest, 331.

(10, p. 9) I perhaps need hardly insist on this point after the references given in my first note; but I find it constantly needful to explain that there is no such thing as a Swiss nation in any but a political sense. The Cantons were simply members of the Empire which gradually won a greater independence than their fellows. And the Forest Cantons, and the German-speaking Swiss generally, do not even form a distinct part of the German nation; they are simply three settlements of the Alemanni, just as the three divisions of Lincolnshire are three settlements of the Angles.

(11, p. 9) The earliest instance that I know of the use of the word *Englaland* is in the Treaty with Olaf and Justin in 991. Its earliest use in the English Chronicles is in 1014. See Norman Conquest, i. 78, 276, 605, 629. The oldest use that I know of the name Yorkshire (*Eoforwicscir*) is in the Chronicles under 1065. See Norman Conquest, ii 478. Deira is, of course, as old as Gregory the Great's pun.

(12, p. 10.) The real history of English parishes has yet to be worked out. In England the civil division, call it the *mark* or anything else, which answers to the continental *Gemeinde* or *commune*, has got thoroughly confounded with the ecclesiastical parish. Everywhere out of our island the *parish* is a purely ecclesiastical division, and foreigners have some

difficulty in understanding the civil action of an English parish. That is to say, the *Gemeinde* has taken the ecclesiastical name of *parish*, it has accepted an ecclesiastical chairman in the person of the parish priest, and its assembly has taken the name of an ecclesiastical building. Then, alongside both of the civil *Gemeinde* and of the ecclesiastical parish which has got hopelessly mixed up with it, the system of exemptions (the *Emunitaten* of the Germans) has given rise to the manor or lordship, which has grown up alongside of the original free community, and which has transferred to itself such traces as remain of its ancient judicial powers. See Norman Conquest, vol. v. 461.

(13, p. 10) The nature of democracy is set forth by Periklês in the Funeral Oration, Thucydides, ii 37: ὄνομα μὲν διὰ τὸ μὴ ἐς ὀλίγους ἀλλ' ἐς πλείονας οἰκεῖν δημοκρατία κέκληται· μέτεστι δὲ κατὰ μὲν τοὺς νόμους πρὸς τὰ ἴδια διάφορα πᾶσι τὸ ἴσον κατὰ δὲ τὴν ἀξίωσιν ὡς ἕκαστος ἐν τῷ εὐδοκιμεῖ It is set forth still more clearly by Athênagoras of Syracuse, vi. 39, where the functions of different classes in a democracy are clearly distinguished. ἐγὼ δέ φημι πρῶτα μὲν δῆμον ξύμπαν ὠνομάσθαι, ὀλιγαρχίαν δὲ μέρος, ἔπειτα φύλακας μὲν ἀρίστους εἶναι χρημάτων τοὺς πλουσίους, βουλεῦσαι δ' ἂν βέλτιστα τοὺς ξυνετούς, κρῖναι δ' ἂν ἀκούσαντας ἄριστα τοὺς πολλούς. καὶ ταῦτα ὁμοίως καὶ κατὰ μέρη καὶ ξύμπαντα ἐν δημοκρατίᾳ ἰσομοιρεῖν Here a distinct sphere is assigned both to wealth and to special intelligence Nearly the same division is drawn by a writer who might by comparison be called aristocratic. Isokratês (Areop. 29) holds that the management of public affairs should be immediately in the hands of the men of wealth and leisure, who should act as servants of the People, the People itself being their master—or, as he does not scruple to say, *Tyrant*—with full power of reward and punishment. ἐκεῖνοι διεγνωκότες ἦσαν ὅτι δεῖ τὸν μὲν δῆμον ὥσπερ

τύραννον καθιστάναι τὰς ἀρχὰς καὶ κολάζειν τοὺς ἐξαμαρτάνοντας καὶ κρίνειν περὶ τῶν ἀμφισβητουμένων, τοὺς δὲ σχολὴν ἄγειν δυναμένους καὶ βίον ἱκανὸν κεκτημένους ἐπιμελεῖσθαι τῶν κοινῶν ὥσπερ οἰκέτας, καὶ δικαίους μὲν γενομένους ἐπαινεῖσθαι καὶ στέργειν ταύτῃ τῇ τιμῇ, κακῶς δὲ διοικήσαντας μηδεμιᾶς συγγνώμης τυγχάνειν, ἀλλὰ ταῖς μεγίσταις ζημίαις περιπίπτειν. This he elsewhere (Panath 166) calls democracy with a mixture of aristocracy—not oligarchy (τὴν δημοκρατίαν τὴν ἀριστοκρατίᾳ μεμιγμένην).

The unfavourable meaning which is often attached to the word democracy, when it does not arise from simple ignorance, probably arises from the use of the word by Aristotle. He makes (Politics, iii. 7) three lawful forms of government, *kingship* (βασιλεία), *aristocracy* (ἀριστοκρατία), and what he calls specially πολιτεία or *commonwealth* Of these he makes three corruptions, *tyranny*, *oligarchy*, and *democracy* (τυραννίς, ὀλιγαρχία, δημοκρατία), defining *democracy* to be a government carried on for the special benefit of the poor (πρὸς τὸ συμφέρον τὸ τῶν ἀπόρων) In this there is something of a philosopher's contempt for all popular government, and it is certain that Aristotle's way of speaking is not that which is usual in the Greek historians. Polybios, like Herodotus and Thucydides, uses the word democracy in the old honourable sense, and he takes (ii 38) as his special type of democracy the constitution of the Achaian League, which certainly had in it a strong element of practical aristocracy (see History of Federal Government, cap v.) : ἰσηγορίας καὶ παρρησίας καὶ καθ'λου δημοκρατίας ἀληθινῆς σύστημα καὶ προαίρεσιν εἰλικρινεστέραν οὐκ ἂν εὕροι τις τῆς παρὰ τοῖς Ἀχαιοῖς ὑπαρχούσης. In short, what Aristotle calls πολιτεία Polybios calls δημοκρατία ; what Aristotle calls δημοκρατία Polybios calls ὀχλοκρατία.

(14, p. 11.) It follows that, when the commonwealth of Florence disfranchised the whole of the noble families, it lost its right to be called a democracy. See the passing of the

Ordinance of Justice in Sismondi, Républiques Italiennes, iv. 65; Chroniche di Giovanni, viii. 1.

(15, p. 12.) On Slavery in England, see Norman Conquest, i. 81, 333, 368, 432, iv. 385. For fuller accounts, see Kemble's Saxons in England, i. 185; Zopfl. *Geschichte der deutschen Rechtsinstitute*, 62 The three classes of nobles, common freemen, and slaves cannot be better set forth than in the Life of Saint Lebuin (Pertz, ii. 361): "Sunt denique ibi, qui illorum lingua edlingi, sunt qui frilingi, sunt qui lassi dicuntur, quod in Latina sonat lingua, nobiles, ingenuiles, atque serviles"

(16, p. 12) On the *Wite-þeow*, the slave reduced to slavery for his crimes, see Kemble, Saxons in England, i. 200 He is mentioned several times in the laws of Ine, 24, 48, 54, where, as usual in the West-Saxon laws, a distinction is drawn between the English and the Welsh *wite-þeow*. The second reference contains a provision for the case of a newly enslaved *þeow* who should be charged with a crime committed before he was condemned to slavery.

(17, p 14) I wish to leave the details of Eastern matters to Eastern scholars. But there are several places in the Old Testament where we see something very much like a general assembly, combined with distinctions of rank among its members, and with the supremacy of a single chief over all.

(18, p. 15.) Iliad, xx. 4.

Ζεὺς δὲ Θέμιστα κέλευσε θεοὺς ἀγορήνδε καλέσσαι
Κρατὸς ἀπ' Οὐλύμποιο πολυπτύχου· ἡ δ' ἄρα πάντη
Φοιτήσασα κέλευσε Διὸς πρὸς δῶμα νέεσθαι.
Οὔτε τις οὖν Ποταμῶν ἀπέην, νόσφ' Ὠκεανοῖο,
Οὔτ' ἄρα Νυμφάων ταί τ' ἄλσεα καλὰ νέμονται,
Καὶ πηγὰς ποταμῶν, καὶ πίσεα ποιήεντα.

Besides the presence of the Nymphs in the divine *Mycel Gemót*, something might also be said about the important position of Hêrê, Athênê, and other female members of the inner council.

We find the mortal Assembly described at length in the second book of the Iliad, and indeed by implication at the very beginning of the first book.

(19, p 15) We hear the applause of the Assembly in i. 23 and ii. 333, and in the Trojan Assembly, xviii. 313.

(20, p. 16) On the whole nature of the Homeric *ἀγορή* see Gladstone's Homer and the Homeric Age, iii. 14. Mr. Gladstone has, to my thinking, understood the spirit of the old Greek polity much better than Mr Grote.

(21, p. 16) There is no need to go into any speculations as to the early Roman Constitution, as to the origin of the distinction of *patres* and *plebs*, or any of the other points about which controversies have raged among scholars The three elements stand out in every version, legendary and historical In Livy, i. 8, Romulus first holds his general Assembly and then chooses his Senate. And in c. 26 we get the distinct appeal from the King, or rather from the magistrates acting by his authority, to an Assembly which, whatever might be its constitution, is more popular than the Senate

(22, p. 16.) It is hardly needful to show how the Roman Consuls simply stepped into the place of the Kings. It is possible, as some have thought, that the revolution threw more power into patrician hands than before; but at all events the Senate and the Assembly go on just as before

(23, p 17) Tacitus, de Moribus Germaniæ, c. 7—13: "Reges ex nobilitate, Duces ex virtute sumunt. Nec Regibus infinita aut libera potestas; et Duces exemplo

potius quam imperio. si prompti, si conspicui, si ante aciem agant, admiratione præsunt . . . . . De minoribus rebus Principes consultant, de majoribus omnes; ita tamen ut ea quoque quorum penes plebem arbitrium est apud Principes pertractentur . . . . . Ut turbæ placuit, considunt armati. Silentium per Sacerdotes, quibus tum et coercendi jus est, imperatur. Mox Rex, vel Princeps, prout ætas cuique, prout nobilitas, prout decus bellorum, prout facundia est audiuntur, auctoritate suadendi magis quam jubendi potestate. Si displicuit sententia, fremitu adspernantur; sin placuit, frameas concutiunt. Honoratissimum adsensûs genus est, armis laudare. Licet apud concilium adcusare quoque et discrimen capitis intendere . . . . . Eliguntur in iisdem conciliis et Principes, qui jura per pagos vicosque reddant. Centeni singulis ex plebe comites, consilium simul et auctoritas, adsunt Nihil autem neque publicæ neque privatæ rei nisi armati agunt."

For a commentary, see Zopfl, *Geschichte der deutschen Rechtsinstitute*, p. 94. See also Allen, Royal Prerogative, 12, 162.

(24, p. 19) See Norman Conquest. i. 95. The primitive Constitution lasted longest at the other end of the Empire, in Friesland. See Eichhorn, *Deutsche Staats- und Rechtsgeschichte*, ii. 265, iii. 158. Zopfl, *Geschichte der deutschen Rechtsquellen*, p 154.

(25, p. 20.) Τὰ ἀρχαῖα ἤθη κρατείτω is an ecclesiastical maxim: rightly understood, it is just as true in politics.

(26, p 22) See my papers on "the Origin of the English Nation" and "the Alleged Permanence of Roman Civilization in England" in Macmillan's Magazine, 1870.

(27, p. 24.) See Schmid, *Gesetze der Angelsachsen*, on the words *wealh* and *wylne*. Earle, Philology of the

English Tongue, 318. On the fact that the English settlers brought their women with them, see Historical Essays, p. 36.

(28, p. 26.) On *Eorlas* and *Ceorlas* I have said something in the History of the Norman Conquest, i. 80. See the two words in Schmid, and the references there given.

(29, p. 27.) On the Barons of Attinghausen, see Blumer, *Staats- und Rechtsgeschichte der schweizerischen Demokratien*, i. 122, 214, 272.

(30, p. 28.) I cannot at this moment lay my hand on my authority for this curious, and probably mythical, custom, but it is equally good as an illustration any way.

(31, p. 29.) This custom is described by Diodôros, i. 70. The priest first recounted the good deeds of the King, and attributed to him all possible virtues; then he invoked a curse for whatever has been done wrongfully, absolving the King from all blame and praying that the vengeance might fall on his ministers who had suggested evil things (*τὸ τελευταῖον ὑπὲρ τῶν ἀγνοουμένων ἀρὰν ἐποιεῖτο, τὸν μὲν βασιλέα τῶν ἐγκλημάτων ἐξαιρούμενος, εἰς δὲ τοὺς ὑπηρετοῦντας καὶ διδάξαντας τὰ φαῦλα καὶ τὴν βλαβὴν καὶ τὴν τιμωρίαν ἀξιῶν ἀποσκῆψαι*). He wound up with some moral and religious advice.

(32, p. 31.) Tacitus (Germ. 25) distinguishes "eæ gentes quæ regnantur" from others. And in 43 he speaks of "erga Reges obsequium" as characteristic of some particular tribes: see Norman Conquest, i. 579.

(33, p. 32.) On the use of the words *Ealdorman* and *Heretoga*, see Norman Conquest, i. 581, and the references there given.

(34, p. 32.) See Norman Conquest, i. 583, and the passages in Kemble and Allen there referred to.

(35, p 32) See Kemble's Saxons in England, i. 152, and Massmann's Ulfilas, 744.

(36, p 32) See the words *driht*, *drihten* in Bosworth's Anglo-Saxon Dictionary.

(37, p 33) To say nothing of other objections to this derivation, its author must have fancied that *ing* and not *end* was the ending of the Old-English participle. The mistake is as old as Sir Thomas Smith. See his Commonwealth of England, p 12.

(38, p. 33) See Norman Conquest, i. 583, and the passages there quoted. I have altered the text somewhat from both the earlier editions because of the remarks of Professor Max Muller in the later editions of the Science of Language, ii. 285. I am afraid of meddling with Sanscrit; but certainly an Englishman, looking only to his own language, could hardly have doubted the derivation of *cyning* from *cyn*. But it must be remembered that in any case the root is the same, and the general idea the same. As one of the curiosities of etymology, it is worth noticing that Mr. Wedgwood makes the word "probably identical with Tartar *chan*."

(39, p. 34) We read in the Chronicles, 449, how, on the first Jutish landing in Kent, "heora *heretogan* wæron twegen gebroðra Hengest and Horsa" It is only in 455, on the death of Horsa, that "æfter þam Hengest feng to *rice* and Æsc his sunu"; and in 488, seemingly on the death of Hengest, "Æsc feng to *rice* and was xxiiii wintra Cantwara *cyning*" So among the West-Saxons, in 495, "coman twegen *ealdormen* on Brytene, Cerdic and Cynric his sunu" It is only in 519 that we read "her Cerdic and Cynric West-Saxena *rice* onfengun."

(40, p. 35) The distinction between Kings and Jarls comes out very strongly in the account of the battle of Ashdown (Æscesdune) in the Chronicles in 871. The Danes "wæron on twam gefylcum, on oþrum wæs Bagsecg and Healfdene, þa hæðenan *cingas* and on oðrum wæron þa *eorlas*" It may be marked that in the English army King Æthelred is set against the Danish Kings, and his brother the Ætheling Ælfred against the Jarls. So in the Song of Brunanburh we read of the five Kings and seven Jarls who were slain.

"Fife lagon
on ðæm campstede
ciningas geonge,
sweordum aswefede,
swilce seofone eac
eorlas Anlafes"

We may mark that the Kings were young, as if they had been chosen "ex nobilitate;" nothing is said of the age of the Jarls, who were doubtless chosen "ex virtute."

(41, p 35) I have quoted the passage from Bæda about the satraps in Norman Conquest, i. 579. The passage in the Life of Saint Lebuin, quoted in note 15, also speaks of "principes" as presiding over the several *pagi* or *Gauen*, but he speaks of no King or other common chief over the whole country And this is the more to be marked, as there was a "generale concilium" of the whole Old-Saxon nation, formed, as we are told, of twelve chosen men from each *Gau*. This looks like an early instance of representation, but it should be remembered that we are here dealing with a constitution strictly Federal.

In the like sort we find the rulers of the West-Goths at the time of their crossing the Danube spoken of as *Judices*. See Ammianus, xxvii. 5, and the notes of Lindenbrog and Valesius So also Gibbon, c. xxv. (iv. 305, ed. Milman). So Jordanes (26) speaks of "primates eorum, et duces, qui regum vice illis præerant." Presently he calls Fredigern "Gothorum regulus," like the *subreguli* or *under-cyningas*

of our own History. Presently in c. 28 Athanaric, the successor of Fredigern, is pointedly called *Rex.*

On all this, see Allen, Royal Prerogative, 163.

(42, p. 36.) See Norman Conquest, i. 75, 580.

(43, p. 37.) The best instance in English history of the process by which a kingdom changed into a province, by going through the intermediate stage of a half-independent Ealdormanship, is to be found in the history of South-Western Mercia under its Ealdorman Æthelred and the Lady Æthelflæd, in the reigns of Ælfred and Eadward the Elder. See Norman Conquest, i. 563.

(44, p. 37.) See Norman Conquest, i. 39, 78.

(45, p. 38.) Iliad, ix. 160:—

καὶ μοὶ ὑποστήτω, ὅσσον βασιλεύτερός εἰμι.

(46, p. 39.) The instances in which a great kingdom has been broken up into a number of small states practically independent, but owning a nominal superiority in the successor of the original Sovereign, are not few. In the case of the Empire I have found something to say about it in my Historical Essays, 151, and in the case of the Caliphate in my History and Conquests of the Saracens, 137. How the same process took place with the Mogul Empire in India is set forth by Lord Macaulay in his Essays on Lord Clive and Warren Hastings. But he should not have compared the great Mogul, with his nominal sovereignty, to "the most helpless driveller among the later Carlovingians," a class whom Sir Francis Palgrave has rescued from undeserved contempt. But the breaking up of the Western Kingdom is none the less an example of the same law. The most remarkable thing is the way, or rather the three different ways, in which the scattered members have been brought together again in Germany, Italy, and France.

This process of dismemberment, where a nominal supremacy is still kept by the original Sovereign, must be distinguished from that of falling back upon Dukes or Ealdormen after a period of kingly rule In this latter case it would seem that no central sovereignty went on.

(47, p. 40) At this time of day I suppose it is hardly necessary to prove the elective character of Old-English kingship I have said what I have to say about it in Norman Conquest, i. 106, 596. But I may quote one most remarkable passage from the report made in 787 to Pope Hadrian the First by George and Theophylact, his Legates in England (Haddan and Stubbs, Councils and Ecclesiastical Documents, iii. 453). "Sanximus ut in ordinatione Regum nullus permittat pravorum prævalere assensum . sed legitime Reges a sacerdotibus et senioribus populi eligantur" One would like to know who the "pravi" here denounced were The passage sounds very like a narrowing of the franchise, or some other interference with freedom of election; but in any case it bears witness to the elective character of our ancient kingship, and to the general popular character of the constitution.

(48, p 40) I have described the powers of the Witan, as I understand them and as they were understood by Mr. Kemble, at vol. i p. 108 of the History of the Norman Conquest and in some of the Appendices to that volume. With regard to the powers of the Witan, I find no difference between my own views and those of Professor Stubbs in the Introductory Sketch to his Select Charters (p. 11), where the relations between the King and the Witan, and the general character of our ancient constitution, are set forth with wonderful power and clearness. But I find Mr. Stubbs and myself differing altogether as to the constitution of the Witenagemót. I look upon it as an Assembly of the whole

kingdom, after the type of the smaller assemblies of the shire and other lesser divisions. Mr. Stubbs fully admits the popular character of the smaller assemblies, but denies any such character to the national gathering It is dangerous to set oneself up against the greatest master of English constitutional history, but I must ask the reader to weigh what I say in note Q in the Appendix to my first volume.

[I can now refer the reader to the further discussion of these points in the first volume of Mr. Stubbs' Constitutional History, and in the chapter on the Political Results of the Norman Conquest in my own fifth volume I think that I may say that the difference between the Professor and myself is wholly a difference in our way of looking at the theoretical constitution of the Assembly. I can see no difference between us as to its practical constitution and practical working]

(49, p. 41.) I have collected some of the instances of deposition in Northumberland in the note following that on the constitution of the Witenagemót. (Norman Conquest, i 593) It is not at all unlikely that the report of George and Theophylact quoted above may have a special reference to the frequent changes among the Northumbrian Kings.

(50, p 41.) I have mentioned all the instances at vol. i. p 105 of the Norman Conquest: Sigeberht, Æthelred, Harthacnut, Edward the Second, Richard the Second, James the Second It is remarkable that nearly all are the second of their respective names; for, besides Æthelred, Edward, Richard, and James, Harthacnut might fairly be called Cnut the Second.

(51, p 42.) Tacitus, De Moribus Germaniæ, 13, 14 —"Nec rubor inter comites adspici. Gradus quinetiam et ipse comitatus habet, judicio ejus quem sectantur; magnaque et comitum æmulatio quibus primus apud Principem suum

locus; et Principum cui plurimi et acerrimi comites. . . . . Quum ventum in aciem, turpe Principi virtute vinci, turpe comitatui virtutem Principis non adæquare. Jam vero infame in omnem vitam ac probrosum, superstitem Principi suo ex acie recessisse. Illum defendere, tueri, sua quoque fortia facta gloriæ ejus adsignare, præcipuum sacramentum est. Principes pro victoria pugnant; comites pro Principe" See Allen, Royal Prerogative, 142.

(52, p 43.) The original text of the Song of Maldon will be found in Thorpe's Analecta Anglo-Saxonica. My extracts are made from the modern English version which I attempted in my Old-English History, p. 192 I went on the principle of altering the Old-English text no more than was actually necessary to make it intelligible When a word has altogether dropped out of our modern language, I have of course changed it, when a word is still in use, in however different a sense, I have kept it. Many words which were anciently used in a physical sense are now used only metaphorically; thus "cringe" is used in one of the extracts in its primary meaning of bowing or falling down, and therefore of dying.

(53, p 47.) The history of the Roman clientship is another of those points on which legend and history and ingenious modern speculation all come to much the same, as far as our present purpose is concerned Whether the clients were the same as the *plebs* or not, at any rate no patricians entered into the client relation, and this at once supplies the contrast with Teutonic institutions.

(54, p. 47.) The title of *dominus*, implying a master of slaves, was always refused by the early Emperors This is recorded of Augustus by Suetonius (Aug. 53) and Dion (lv. 12), and still more distinctly of Tiberius (Suetonius, Tib. 27; Dion, lvii. 8).

Tiberius also refused the title of *Imperator*, except in its strictly military sense: *οὔτε γὰρ δεσπότην ἑαυτὸν τοῖς ἐλευθέροις οὔτε αὐτοκράτορα πλὴν τοῖς στρατιώταις καλεῖν ἐφίει.* Caius is said (Aurelius Victor, Cæs. xxxix 4) to have been called *dominus*, and there is no doubt about Domitian (Suetonius, Dom 13; Dion, lxvii. 13, where see Reimar's Note). Pliny in his letters constantly addresses Trajan as *dominus*, yet in his Panegyric (45) he draws the marked distinction: "Scis, ut sunt diversa natura dominatio et principatus, ita non aliis esse principem gratiorem quam qui maxime dominum graventur." This marks the return to older feelings and customs under Trajan. The final and formal establishment of the title seems to have come in with the introduction of Eastern ceremonies under Diocletian (see the passage in Aurelius Victor already referred to) It is freely used by the later Panegyrists, as for instance Eumenius, iv 21, v. 13. "Domine Constanti," "Domine Maximiane, Imperator æterne," and so forth

(55, p. 47) Vitellius (Tac Hist. i. 58) was the first to employ Roman knights in offices hitherto always filled by freedmen; but the system was not fully established till the time of Hadrian (Spartianus, Hadrian, 22).

(56, p 49) See Norman Conquest, i. 89, 587, and the passages here quoted.

(57, p 49) Both *hlàford* and *hlæfdige* (*Lord* and *Lady*) are very puzzling words as to the origin of their later syllables It is enough for my purpose if the connexion of the first syllable with *hláf* be allowed. Different as is the origin of the two words, *hlàford* always translates *dominus*. The French *seigneur*, and the corresponding forms in Italian and Spanish, come from the Latin *senior*, used as equivalent to *dominus*. This is one of the large class of words which are analogous to our *Ealdorman*.

(58, p 49) This is fully treated by Palgrave, English Commonwealth, i. 350, 495, 505.

(59, p 50.) On the change from the *alod*, *odal*, or *eðel*, a man's very own property, to the land held of a lord, see Hallam, Middle Ages, i. 113.

(60, p. 52.) See Norman Conquest, i. 85—88. I have there chiefly followed Mr. Kemble in his chapter on the Noble by Service, Saxons in England, i. 162

(61, p. 52.) See the whole history and meaning of the word in the article *þegen* in Schmid's Glossary.

(62, p. 52) See Norman Conquest, i. 89

(63, p. 55) Barbour, Bruce, i. 224

"A! fredome is A noble thing"

So said Herodotus (v. 78) long before

ἡ ἰσηγορίη ὡς ἔστι χρῆμα σπουδαῖον.

CHAPTER II.

(1, p 57) In the great poetical manifesto of the patriotic party in Henry the Third's reign, printed in Wright's Political Songs of England (Camden Society, 1839,) there seems to be no demand whatever for new laws, but only for the declaration and observance of the old Thus the passage which I have chosen for one of my mottoes runs on thus :—

"Igitur communitas regni consulatur,
Et quid universitas sentiat sciatur,
Cui leges propriæ maxime sunt notæ
Nec cuncti provinciæ sic sunt idiotæ,
Quin sciant plus cæteris regni sui mores,
Quos relinquant posteris hii qui sunt priores.
Qui reguntur legibus magis ipsas sciunt,
Quorum sunt in usibus plus periti fiunt;
Et quia res agitur sua, plus curabunt,
Et quo pax adquiritur sibi procurabunt"

(2, p 57) On the renewal of the Laws of Eadward by William, see Norman Conquest, iv. 324. Stubbs, Documents, 25 It should be marked that the Laws of Eadward were again confirmed by Henry the First (see Stubbs, 90—99), and, as the Great Charter grew out of the Charter of Henry the First produced by Archbishop Stephen Langton in 1213, the descent of the Charter from the Laws of Eadward is very simple. In the whole discussion the names of Eadward and Henry are constantly joined together, and the Primate (see Roger of Wendover, iii 263.) distinctly says that he had made John swear to renew the Laws of Eadward. "Audistis quomodo, tempore quo apud Wintoniam Regem absolvi,

ipsum jurare compulerint, quod leges iniquas destrueret et leges bonas, videlicet leges Eadwardi, revocaret et in regno faceret ab omnibus observari." It must be remembered that the phrase of the Laws of Eadward or of any other King does not really mean a code of laws of that King's drawing up, but simply the way of administering the Law, and the general political condition, which existed in that King's reign. This is all that would be meant by the renewal of the Laws of Eadward in William's time. It simply meant that William was to rule as his English predecessors had ruled before him. But, by the time of John, men had no doubt begun to look on the now canonized Eadward as a lawgiver, and to fancy that there was an actual code of laws of his to be put in force.

On the various confirmations of the Great Charter, see Hallam, Middle Ages, ii. 111.

(3, p. 58.) Macaulay, ii. 660. "When they were told that there was no precedent for declaring the throne vacant, they produced from among the records of the Tower a roll of parchment, near three hundred years old, on which, in quaint characters and barbarous Latin, it was recorded that the Estates of the Realm had declared vacant the throne of a perfidious and tyrannical Plantagenet." See more at large in the debate of the Conference between the Houses, ii. 645.

(4, p. 60.) See Kemble, Saxons in England, ii. 186—194. This, it will be remembered, is admitted by Professor Stubbs. See above, note 48 to Chapter I.

(5, p. 60.) See Kemble, ii. 199, 200, and compare page 194.

(6, p. 60.) I have collected these passages in my History of the Norman Conquest, i. 591.

(7, p. 61.) On the acclamations of the Assembly, see note 19 to Chapter I. I suspect that in all early assemblies, and

not in that of Sparta only, *κρίνουσι βοῇ καὶ οὐ ψήφῳ* (Thuc i. 87). We still retain the custom in the cry of "Aye" and "No," from which the actual vote is a mere appeal, just like the division ordered by Sthenelaidas when he professed not to know on which side the shout was.

(8, p. 62.) See Norman Conquest, i. 100, and History of Federal Government, i. 263.

(9, p 63) See Norman Conquest, iv. 694. In this case the Chronicler, under the year 1086, distinguishes two classes in the Assembly, "his witan and ealle þa landsittende men þe ahtes wæron ofer eall Engleland." These "landsittende men" were evidently the forerunners of the "libere tenentes," who, whether their holdings were great or small, kept their place in the early Parliaments See Hallam, ii. 140—146, where will be found many passages showing the still abiding traces of the popular constitution of the Assembly.

(10, p. 64) The practice of summoning particular persons can be traced up to very early times. See Kemble, ii. 202, for instances in the reign of Æthelstan. On its use in later times, see Hallam. ii. 254—260, and on the irregularity in the way of summoning the spiritual peers, ii 253.

The bearing of these precedents on the question of life peerages will be seen by any one who goes through Sir T. E. May's summary, Constitutional History, i. 291—298.

(11, p 66) Sismondi, Histoire des Français, v 289: "Ce roi, le plus absolu entre ceux qui ont porté la couronne de France, le moins occupé du bien de ses peuples, le moins consciencieux dans son observation des droits établis avant lui, est cependant le restaurateur des assemblées populaires de la France, et l'auteur de la représentation des communes dans les états généraux." See Historical Essays, 45.

(12, p 67.) See the history of Stephen Martel in Sismondi, Histoire des Français, vol vi. capp. viii. ix, and the account of the dominion of the Butchers, vii. 259, and more at large in Thierry's History of the Tiers-État, capp. ii. iii.

(13, p 67.) The Parliament of Paris, though it had its use as some small check on the mere despotism of the Crown, can hardly come under the head of free institutions. France, as France, under the old state of things, cannot be said to have kept any free institutions at all, the only traces of freedom were to be found in the local Estates which still met in several of the provinces. See De Tocqueville, Ancien Régime, 347.

(14, p. 69.) The thirteenth century was the time when most of the existing states and nations of Europe took something like their present form and constitution The great powers which had hitherto, in name at least, divided the Christian and Mahometan world, the Eastern and Western Empires and the Eastern and Western Caliphates, may now be looked on as practically coming to an end England, France, and Spain began to take something like their present shape, and to show the beginnings of the characteristic position and policy of each. The chief languages of Western Europe grew into something like their modern form In short, the character of this age as a time of beginnings and endings might be traced out in detail through the most part of Europe and Asia.

(15, p. 69) Dr. Pauli does not scruple to give him this title in his admirable monograph, "*Simon von Montfort Graf von Leicester, der Schopfer des Hauses der Gemeinen*" Yet one element of the House of Commons, the Knights of the Shire, had been growing up during the whole of the thirteenth century, and the final and settled form of the House of

Commons was the work of Edward rather than of Simon. It is therefore perhaps going too far to call Simon the founder of the House of Commons, though he is undoubtedly the founder of one most important element in it, of the element to which its modern character has been mainly owing. The career of the Earl should be studied in Dr. Pauli's work, and in Mr. Blaauw's "Barons' War."

(16, p 71.)

"Numquam libertas gratior exstat
Quam sub rege pio"—Claudian, ii. Cons Stil 114

(17, p 71.) Macaulay, i. 15 "England owes her escape from such calamities to an event which her historians have generally represented as disastrous Her interest was so directly opposed to the interest of her rulers that she had no hope but in their errors and misfortunes. The talents and even the virtues of her six first French Kings were a curse to her. The follies and vices of the seventh were her salvation . . England, which, since the battle of Hastings, had been ruled generally by wise statesmen, always by brave soldiers, fell under the dominion of a trifler and a coward From that moment her prospects brightened John was driven from Normandy. The Norman nobles were compelled to make their election between the island and the continent. Shut up by the sea with the people whom they had hitherto oppressed and despised, they gradually came to regard England as their country, and the English as their countrymen. The two races so long hostile, soon found that they had common interests and common enemies. Both were alike aggrieved by the tyranny of a bad King. Both were alike indignant at the favour shown by the court to the natives of Poitou and Aquitaine. The great grandsons of those who had fought under William and the great grandsons of those who had fought under Harold began to draw near to each other in friendship; and the first pledge of their

reconciliation was the Great Charter, won by their united exertions, and framed for their common benefit."

[After a more minute study of John's reign, I may say that this account holds perfectly good, except in the character which Lord Macaulay gives of John himself, and in the words which seem to imply that the fusion of Norman and English only began under John. John himself certainly was very often a trifler, but he was not a coward. No man could act with greater courage and energy when he chose to do so, and it is of some importance that as our liberties were not won from an usurper, but from a lawful King, so they were won from a King of no small natural powers, if his moral degradation allowed him to make any good use of them. John has, I think, been better judged by Mr. Green, Short History of the English People, p 118.]

(18, p. 72.) I have tried to work out the gradual character of the transfer of lands and offices under William in various parts of the fourth volume of my History of the Norman Conquest; see especially p. 22, et seqq. The popular notion of a general scramble for everything gives a most false view of William's whole character and position.

(19, p. 74.) See Norman Conquest, i. 176.

(20, p. 74) This is distinctly asserted in the Dialogus de Scaccario (i 10), under Henry the Second: "Jam cohabitantibus Anglicis et Normannis, et alterutrum uxores ducentibus vel nubentibus, sic permixtæ sunt nationes, ut vix discerni possit hodie, de liberis loquor, quis Anglicus quis Normannus sit genere; exceptis duntaxat ascriptitiis qui villani dicuntur, quibus non est liberum obstantibus dominis suis a sui statûs conditione discedere"

(21, p 74.) The Angevin family are commonly known as the Plantagenets: but that name was never used as a surname till the fifteenth century. The name is sometimes convenient,

but it is not a really correct description, like Tudor and Stewart, both of which were real surnames, borne by the two families before they came to the Crown. In the almanacks the Angevins are called "The Saxon line restored," a name which gives a false idea, though there can be no doubt that Henry the Second was fully aware of the advantages to be drawn from his remote female descent from the Old-English Kings. The point to be borne in mind is that the accession of Henry is the beginning of a distinct dynasty which could not be called either Norman or English in any but the most indirect way.

(22, p 75) There is nothing in any of the writers of Henry the Second's time to justify the popular notions about "Normans and Saxons" as two distinct and hostile bodies. The only writer of that day who seems to have thought at all of such distinctions was Giraldus Cambrensis, who, as an antiquary and philologer, and one who had taken upon himself to be the champion of an "oppressed nationality" in another part of the island, was specially bound to be careful about such matters. His speech makes the silence of everybody else more emphatic But even he does not talk about "Normans and Saxons," a formula which begins with Robert of Gloucester. Nor do we in Henry's reign hear any complaints of favour being shown to absolute foreigners in preference to either, though it is certain that many high preferments, especially in the Church, were held by men who were not English in either sense. The peculiar position of Henry the Second was something like that of the Emperor Charles the Fifth, that of a prince ruling over a great number of distinct states, without being nationally identified with any of them. Henry ruled over England, Normandy, and Aquitaine, but he was neither English, Norman, nor Gascon.

(23, p. 75.) In the administration of Archbishop Hubert in the later days of Richard, see Stubbs, Constitutional History, i. 505.

(24, p. 75.) That is the greater, the continental, part of the Duchy. The insular part of Normandy, the Channel Islands, was not lost, and it still remains attached to the English Crown, not as part of the United Kingdom, but as a separate dependency. See Norman Conquest, i. 187.

(25, p. 77.) See Norman Conquest, i. 310, 367; and on the appointment of Bishops and Abbots, i. 503, ii. 66, 571.

(26, p. 78.) See the Ordinance in Norman Conquest, iv. 392. Stubbs, Select Charters, 81.

(27, p. 78.) See Norman Conquest, iii. 317.

(28, p. 79.) It should be remembered that the clerical immunities which were claimed in this age were by no means confined to those whom we should now call clergymen, but that they also took in that large class of persons who held smaller ecclesiastical offices without being what we should call in holy orders. The Church also claimed jurisdiction in the causes of widows and orphans, and in various cases where questions of perjury, breach of faith, and the like, were concerned. Thus John Bishop of Poitiers writes to Archbishop Thomas (Giles, Sanctus Thomas, vi. 238), complaining that the King's officers had forbidden him to hear the causes of widows and orphans, and also to hear causes in matters of usury: "prohibentes ne ad querelas viduarum vel orphanorum vel clericorum aliquem parochianorum meorum in causam trahere præsumerem super quacumque possessione immobili, donec ministeriales regis, vel dominorum ad quorum feudum res controversiæ pertineret, in facienda justitia eis defecissent. Deinde ne super accusatione fœnoris

quemquam audirem." This gives a special force to the acclamations with which Thomas was greeted on his return as "the father of the orphans and the judge of the widows:" "Videres mox pauperum turbam quæ convenerat in occursum, hos succinctos ut prævenirent et patrem suum applicantem exciperent, et benedictionem præriperent, alios vero humi se humiliter prosternentes, ejulantes hos, plorantes illos præ gaudio, et omnes conclamantes, Benedictus qui venit in nomine Domini, pater orphanorum et judex viduarum! et pauperes quidem sic." Herbert of Bosham, Giles, Sanctus Thomas, vii 315, cf 148. See more in Historical Essays, 99.

(29, p 79) On the cruel punishments inflicted in the King's courts Herbert of Bosham is very emphatic in more than one passage. He pleads (vii. 101) as a merit of the Bishops' courts that in them no mutilations were inflicted. Men were punished there "absque omni mutilatione vel deformatione membrorum" But he by no means claims freedom from mutilation as a mere clerical privilege, he distinctly condemns mutilation in any case, though on grounds rather of theology than of humanity. "Adeo etiam quod ordinis privilegium excludat cauterium · quam tamen pœnam communiter inter homines etiam jus forense damnat. ne videlicet in homine Dei imago deformetur" (vii. 105) In earlier times there seems to have been no feeling against mutilation when the sufferer was believed to be really guilty. A most curious story illustrative of the barbarous jurisprudence of the time will be found in Benedict's Miracula Sancti Thomæ, 184.

(30, p 79) One of the Constitutions of Clarendon forbade villains to be ordained without the consent of their lords "Filii rusticorum non debent ordinari absque assensu domini de cujus terra nati dignoscuntur" (Stubbs, Select Charters, 134) On the principles of feudal law nothing can be said against this, as the lord had a property in his villain which

he would lose by the villain's ordination. The prohibition is noticed in some remarkable lines of the earliest biographer of Thomas, Garnier of Pont-Sainte-Maxence (La Vie de Saint Thomas le Martyr, Paris, 1859, p. 89), where he strongly asserts the equality of gentleman and villain before God :—

> "Fils à vilains ne fust en nul liu ordenez
> Sanz l'otrei sun seigneur de cui terre il fu nez
> Et deus à sun survise nus a tuz apelez !
> Mielz valt fils à vilain qui est preux e senez,
> Que ne feit gentilz hum faillliz et debutez "

Thomas himself was not the son of a villain, but his birth was such that the King could sneer at him as "plebeius quidam clericus"

(31, p 80) We are not inclined to find fault with such an appointment as that of Stephen Langton, still his forced election at the bidding of Innocent was a distinct breach of the rights of the King, of the Convent of Christ Church, and of the English nation generally See the account of his election in Roger of Wendover, iii. 212; Lingard, ii. 314; Hook's Archbishops, ii. 668

(32, p 80) See the Bulls and Letters by which Innocent professed to annul the Great Charter, in Roger of Wendover, iii 323, 327; the excommunication of the Barons, in iii 336, and the suspension of the Archbishop, in iii 340.

No Englishman need trouble himself with the frivolous question whether Innocent condemned the Charter because he disliked its contents, or only because he disliked the way in which it had been won from the King. The one thing that matters is that a Bishop of Rome should take on himself to condemn the Charter of English freedom on any ground.

(33, p 80.) There is a separate treatise on the Miracles of Simon of Montfort, printed along with Rishanger's Chronicle by the Camden Society, 1840.

(34, p. 81.) I think I may safely say that the only royalist chronicler of the reign of Henry the Third is Thomas Wykes, the Austin Canon of Osney. There is also one poem on the royalist side, to balance many on the side of the Barons, among the Political Songs published by the Camden Society, 1839, p. 128

Letters to Earl Simon and his Countess Eleanor form a considerable part of the letters of Robert Grosseteste, published by Mr. Luard for the Master of the Rolls. Matthew Paris also (879, Wats) speaks of him as "episcopus Lincolniensis Robertus, cui comes tamquam patri confessori exstitit familiarissimus" This however was in the earlier part of Simon's career, before the war had broken out. The share of Bishop Walter of Cantilupe, who was present at Evesham and absolved the Earl and his followers, will be found in most of the Chronicles of the time. It comes out well in the riming Chronicle of Robert of Gloucester (ii 558) —

> "þe bissop Water of Wurcetre asoiled hom alle þere
> And prechede hom, þat hii adde of deþ þe lasse fere"

This writer says of the battle of Evesham :—

> "Such was þe morþre of Eivesham (vor bataile non it was)"

(35, p. 81) This letter, addressed in 1247 to Pope Innocent the Fourth, will be found in Matthew Paris (721, Wats). It is written in the name of "universitas cleri et populi per provinciam Cantuariensem constituti," and it ends, "quia communitas nostra sigillum non habet, præsentes literas signo communitatis civitatis Londinensis vestræ sanctitati mittimus consignatas." Another letter in the same form follows to the Cardinals. There are two earlier letters in 1245 and 1246 (Matthew Paris, 666, 700), the former from the "magnates et universitas regni Angliæ," the other in the name of Richard Earl of Cornwall (afterwards King of the

Romans), Simon Earl of Leicester, and other Earls, "et alii totius regni Angliæ Barones, proceres, et magnates, et nobiles portuum maris habitatores, necnon et clerus et populus universus" The distinct mention of the Cinque Ports, whose representatives in Parliament are still called Barons—the "nobiles" of the letter—should be noticed.

(36, p 82.) The writer of the Gesta Stephani (3) distinctly attributes the election of Stephen to the citizens of London. "Majores igitur natu, consultuque quique provectiores, concilium coegere, deque regni statu, pro arbitrio suo, utilia in commune providentes, ad regem eligendum unanimiter conspiravere." He then goes on with the details of the election He is borne out by the Chronicle 1135: "Stephne de Blais com to Lundene and te Lundenisce folc him underfeng," and by William of Malmesbury, Historia Novella, i. 11: "A Londoniensibus et Wintoniensibus in Regem exceptus est." So again when the Legate, Henry Bishop of Winchester, holds a council for the election of the Empress Matilda. the citizens of London were summoned, and it is distinctly said that they held the rank of nobles or barons: "Londonienses (qui sunt quasi optimates, pro magnitudine civitatis, in Anglia)." "Londonienses, qui præcipui habebantur in Anglia, sicut proceres" (Historia Novella, iii. 45, 46). All this is exactly like the earlier elections of Kings before the Conquest. The rights of the city also come out in Richard's time, when the citizens join with Earl John and the Barons in 1191 in deposing the Chancellor, William Longchamp, Bishop of Ely. See Benedict, Gesta Ricardi, ii. 213.

(37, p 83) The words of the Charter, 12—14 (Stubbs, 290) are: "Nullum scutagium vel auxilium ponatur in regno nostro, nisi per commune consilium regni nostri, nisi ad corpus nostrum redimendum, etc. . . . . . Et ad habendum commune consilium regni, de auxilio assidendo aliter quam

in tribus casibus prædictis, vel de scutagio assidendo, summoneri faciemus archiepiscopos, episcopos, abbates, comites, et majores barones, sigillatim per litteras nostras, et præterea faciemus summoneri in generali, per vicecomites et ballivos nostros, omnes illos qui de nobis tenent in capite." This is exactly like the entry in the Chronicle (1123), describing the summoning of a Witenagemót by Henry the First: "Daone þær æfter sende se kyng hise write ofer eal Englelande, and bed hise biscopes and hise abbates and hise þeignes ealle ȝet hi scolden cumen to his gewitenemot on Candelnesse deig to Gleawceastre him togeanes; and hi swa diden."

(38, p 83) These first glimmerings of parliamentary representation were carefully traced out by Hallam (Middle Ages, ii. 146—152). They can now be more fully studied in the work of Professor Stubbs [Yet more fully in the fifteenth chapter of his Constitutional History, in the newly-published second volume] On the summons in 1213 of four men for each shire besides "milites et barones" ("quatuor discretos homines de comitatu tuo illuc venire facias"), the Professor remarks (278. "It is the first writ in which the 'four discreet men' of the county appear as representatives; the first instance of the summoning of the folkmoot to a general assembly by the machinery already used for judicial purposes."

(39, p 84) On this subject the eighth chapter of Sir Francis Palgrave's English Commonwealth should be studied.

(40, p 85) For the whole career of Simon I must again refer generally to Pauli and Blaauw. The great writ itself, dated at Worcester, December 14th, 1264, will be found in Rymer's Fœdera, i 449 It has often been noticed how small is the number of Earls and other lay Barons, and how

unusually large the number of churchmen, who are summoned to this Parliament. The whole list will be found in Rymer. The parts of the writ which concern us stand thus:

"Item mandatum est singulis vicecomitibus per Angliam; quod venire faciant duos milites de legalioribus, probioribus, et discretioribus militibus singulorum comitatuum, ad Regem London' in octab' prædictis, in formâ supradictâ.

"Item in formâ prædictâ scribitur civibus Ebor', civibus Lincoln', et cæteris burgis Angliæ; quod mittant in formâ prædictâ duos de discretioribus, legalioribus, et probioribus, tam civibus, quam burgensibus suis

"Item in formâ prædictâ mandatum est baronibus et probis hominibus Quinque Portuum."

"This is often regarded as the origin of popular representation: but it is not in any sense entitled to that praise. The novelty was simply the assembling the representatives of the towns in conjunction with those of the counties; this was now done for the first time for the purpose of the national council." Stubbs, 401.

(41, p. 86.) The account of this most remarkable trial, held on June 11th, 1252, is given in a letter from Simon's intimate friend the famous Franciscan Adam Marsh (de Marisco) to Bishop Robert Grosseteste. The Latin text is printed in Mr. Brewer's Monumenta Franciscana, p. 122, and there is an English translation in the Appendix to Mrs. Green's Life of Countess Eleanor, English Princesses, ii 447. Simon's witnesses, knights and citizens, come "muniti litteris patentibus communitatis Burdegalensis, in quâ quasi totum robur Vasconiæ ad distringendum hostiles et fideles protegendum consistere dignoscitur," setting forth how good Simon's government was in every way, and how those who brought charges against him did so only because his strict justice had put a check on their misdoings. We may

compare the words of the great poetical manifesto (Political Songs, 76):

> "Seductorem nominant S atque fallacem,
> Facta sed examinant probantque veracem."

(42, p. 86) For the Londoners at Lewes let us take the account of an enemy. Thomas Wykes (148) tells us how the Earl set out, "glorians in virtute sua congregata baronum multitudine copiosa, Londoniensium innumerabili agmine circumcinctus, quia legitur stultorum infinitus est numerus." Presently we read how the "Londoniensium innumera multitudo, bellorum ignara" were put to flight by the Lord Edward very much after the manner of Prince Rupert.

(43, p. 88) On the religious reverence paid to Earl Waltheof, see Norman Conquest, ii. 602. I have there referred to the office of Thomas of Lancaster, which will be found in Political Songs, 268. Some of the pieces are what we should think most daring parodies of parts of the Church Service, but we may be sure that what was intended was reverence and not irreverence. There is another parody of the same kind in honour of Earl Thomas, a little earlier back in the volume, p. 258. It was a matter of course that Thomas of Lancaster should be likened to Thomas of Canterbury.

> "Gaude, Thoma, ducum decus, lucerna Lancastriæ,
> Qui per necem imitaris Thomam Cantuariæ,
> Cujus caput conculcatur pacem ob ecclesiæ,
> Atque tuum detruncatur causa pacis Angliæ"

(44, p 88.) Let us take a Latin, a French, and an English specimen of the poems in which Simon's death was lamented and his intercession implored

> "Salve, Symon Montis Fortis,
> Totius flos militiæ,
> Duras pœnas passus mortis,
> Protector gentis Angliæ
> Sunt de sanctis inaudita
> Cunctis passis in hac vita,

Quemquam passum talia;
Manus, pedes, amputari,
Caput, corpus, vulnerari,
Abscidi virilia.
Sis pro nobis intercessor
Apud Deum, qui defensor
In terris exstiteras"—(Political Songs, 124.)

The French poem which follows directly in the collection is too long to copy in full. This is perhaps the most remarkable stanza, in which we again find the comparison with Thomas of Canterbury:—

"Mès par sa mort, le cuens Mountfort conquist la victorie,
Come ly martyr de Caunterbyr, finist sa vie,
Ne voleit pas li bon Thomas qe perist seinte Eglise,
Le cuens auxi se combati, e morust sauntz feyntise
Ore est ocys la flur de pris, qe taunt savoit de guerre,
Ly quens Montfort, sa dure mort molt emplorra la terre"

In this poem there is not, as in the Latin one, any direct prayer to the martyred Earl, but in the last stanza we read:—

"Sire Simoun ly prodhom, e sa compagnie,
En joie vont en ciel amount, en pardurable vie"

The only English piece on these wars belongs to an earlier date, namely, the satirical poem against King Richard, how the one English Augustus

"Makede him a castel of a mulne post,"

but we get verses on Simon's death in the Chronicle of Robert of Gloucester (ii 559):—

"& sir Simond was aslawe & is folk al to grounde,
More murþre are nas in so lute stounde.
Vor þere was werst Simond de Mountfort aslawe, alas!
& sir Henri is sone, þat so gentil kniȝt was
* * * * * * *
& among alle oþere mest reuþe it was ido,
þat sir Simon þe olde man demembred was so"

He then goes on with the details of the dismemberment, of which a picture may be seen opposite p. 254 of Mr.

how "convenerunt archiepiscopi et episcopi, comites et barones, et *de quolibet comitatu quatuor milites et de qualibet civitate quatuor.*" This and the summons to the Parliament of 1285, which sat in judgement on David of Wales (Stubbs, 453, 457), seem the most distinct cases of borough representation earlier than 1295, since which time the summoning of the borough members has gone on regularly. See Stubbs, 473. Mr. Stubbs' remarks on the Assemblies of "the transitionary period" in pp. 465, 469 should be specially studied.

(46, p. 89) The history of the resistance of these two Earls to King Edward, which led to the great Confirmation of the Charters in 1297, will be found in all the histories of the time, old and new. See also Stubbs, 431, 479. I feel no difficulty in reconciling respect for Edward with respect for the men who withstood him. The case is well put by Stubbs, 34, 35. [But in the Constitutional History, ii. 132, 133 the Professor does seem to me a little hard on the two Earls.]

(47, p 90) The exact value of the document commonly known as the statute "De Tallagio non concedendo" is discussed by Professor Stubbs, p 487. It is perhaps safest to look on it, like many of the earlier collections of laws, not indeed as an actual statute, but as good evidence of a principle which, from the time of the Confirmation of the Charters, has been universally received The words are—

"Nullum tallagium vel auxilium per nos vel hæredes nostros de cetero in regno nostro imponatur seu levetur, sine voluntate et assensu communi archiepiscoporum, episcoporum et aliorum prælatorum, comitum, baronum, militum, burgensium, et aliorum liberorum hominum in regno nostro" This, it will be seen, is the same provision which I have already quoted (see above, Note 37) from the Great Charter of John, but which

was left out in the Charter in the form in which it was confirmed by Henry the Third. See Stubbs, 330, 332, 336.

(48, p. 91.) I have said this before in Historical Essays, p 41. On the strongly marked legal character of Edward's age, and especially of Edward's own mind, see Stubbs, 417 [and, above all, Constitutional History, ii. 105, 157, 291].

(49, p. 93) The great statute of treason of 25 Edward the Third (see the Revised Edition of the Statutes, i. 185) secures the life of the King, his wife, and his eldest son, and the chastity of his wife, his eldest daughter, and his eldest son's wife. But the personal privilege goes no further. As the Law of England knows no classes of men except peers and commoners, it follows that the younger children of the King—the eldest is born Duke of Cornwall—are, in strictness of speech, commoners, unless they are personally raised to the peerage. I am not aware that either case has ever arisen, but I conceive that there is nothing to hinder a King's son, not being a peer, from voting at an election or from being chosen to the House of Commons, and I conceive that, if he committed a crime, he would be tried by a jury. Mere precedence and titles have nothing to do with the matter, though probably a good deal of confusion arises from the very modern fashion—one might almost say the modern vulgarism—of calling all the children of the King or Queen "Princes" and "Princesses" As late as the time of George the Second uncourtly Englishmen were still found who eschewed the foreign innovation, and who spoke of the Lady Carolin and the Lady Emily, as their fathers had done before th lia. Another modern vulgarism is that of using the word mmu al"—"royal visit" "royal marriage," and so forth—wh whil re is no royalty in the case, the person spoken of being a alu de in ect, perhaps a commoner.

(50, p. 95.) On the parliam he Wi position of the clergy see Hallam, Middle Ages, ii. 263 d as far as the reign of

Edward the First is concerned, see the series of summonses in Stubbs, 442.

(51, p. 95) On this important constitutional change, which was made in 1664, without any Act of Parliament, but by a mere verbal agreement between Archbishop Sheldon and Lord Chancellor Clarendon, see Hallam, Constitutional History, ii. 405.

(52, p. 96) This is true on the whole, especially at the beginning of the institution of the States-General, though there were also *roturiers* who were the immediate burgesses of the King. See Thierry, History of the Tiers Etat, i. 56 (Eng. trans). It is in that work that the history of that branch of the States-General should be studied.

(53, p 97) The question of one or two Chambers in an ordinary monarchy or commonwealth is altogether different from the same question under a Federal system. In England or France the question between one or two Chambers in the Legislature is simply a question in which of the two ways the Legislature is likely to do its work best But in a Federal constitution, like that of Switzerland or the United States, the two Chambers are absolutely necessary. The double sovereignty, that of the whole nation and that of the independent and equal States which have joined together to form it, can be rightly represented only by having two Chambers, one of them, the *Nationalrath* or House of Representatives, directly representing the nation as such, and the other, the *Standerath* or Senate, representing the separate sovereignty of the Cantons. In the debates early in 1872 as to the revision of the Swiss Federal Constitution, a proposal made in the *Nationalrath* for the abolition of the *Standerath* was thrown out by a large majority.

(54, p. 97.) On the old Constitution of Sweden, see Laing's Sweden.

(55, p. 98.) This common mistake and its cause are fully explained by Hallam, Middle Ages, ii. 237 [and most fully of all in Stubbs' Constitutional History, 163—194, where we may see how near we were to having a fourth estate of lawyers]. There is a curious reference to the number of the estates in Roger North's Examen, 222, where it is said that Titus Oates, "busy in saving the King's life, could dispute learnedly against his authority, upon the foolish republican conceit that he was one of the three estates co-ordinate with the rest." But those who have traced English Law to its fountain-head, do not need any 'republican conceits' to lead them to the great doctrine set forth in the second motto in my title-page.

(56, p 100) "The two Houses had contended violently in 1675, concerning the appellate jurisdiction of the Lords; they had contended, with not less violence, in 1704, upon the jurisdiction of the Commons in matters of election; they had quarrelled rudely, in 1770, while insisting upon the exclusion of strangers. But upon general measures of public policy their differences had been rare and unimportant" May's Constitutional History, i. 307. The writer goes on to show why differences between the two Houses on important points have become more common in very recent times

(57, p. 101.) The share of the Witan in early times in the appointment of Bishops, Ealdormen, and other great officers, need hardly be dwelled upon. For a debate in a Witenagemót of Eadward the Confessor on a question of peace or war, see Norman Conquest, ii. 90 For the like under Henry the Third, see the account in Matthew Paris, in the year 1242, which will be found in Stubbs, 359. The state of the case under Edward the Third is discussed by Hallam, Middle Ages, ii 184. See also May, ii. 86 But the most remarkable passage of all is one in the great poetical manifesto

which I have several times quoted: it is there (Political Songs, 96) made one of the charges against Henry the Third that he wished to keep the appointment of the great officers of state in his own hands. The passage is long, but it is well worth quoting at length.

> "Rex cum suis voluit ita liber esse;
> Et sic esse debuit, fuitque necesse
> Aut esse desineret rex, privatus jure
> Regis, nisi faceret quidquid vellet, curæ
> Non esse magnatibus regni quos præferret
> Suis comitatibus, vel quibus conferret
> Castrorum custodiam, vel quem exhibere
> Populo justitiam vellet, et habere
> Regni cancellarium thesaurariumque
> Suum ad arbitrium voluit quemcumque,
> Et consiliarios de quacumque gente,
> Et ministros varios se præcipiente,
> Non intromittentibus se de factis regis
> Angliæ baronibus, vim habente legis
> Principis imperio, et quod imperaret
> Suomet arbitrio singulos ligaret"

(58, p. 101.) Take for example the Act passed after Edward the Fourth's success at Towton. Rot. Parl. v. 466 Among other things, poor Henry the Sixth is not only branded as an usurper, but is charged with personally stirring up the movement in the North which led to the battle of Wakefield and the death of Richard Duke of York. "The seid Henry Usurpour, late called Kyng Henry the Sixt, contynuyng in his olde rancour & malice, usyng the fraude & malicious disceit & dissimulacion ayenst trouth & conscience, that accorde not with the honoure of eny Cristen Prynce, . . . with all subtill ymaginacions & disceitfull weyes & meanes to hym possible, intended & covertely laboured, excited & procured the fynal destruction, murdre & deth of the seid Richard Duc, and of his Sonnes, that is to sey, of oure seid nowe Soverayne Lord Kyng Edward the fourth, then Erle of Marche, & of the noble Lord Edmund Erle of Ruthlande; & for th' execution of his dampnable & malicious purpose,

by writing & other messages, mowed, excited, & stured therunto the Duks of Excestr' & Somerset, & other lordes beyng then in the North parties of this Reame."

(59, p. 101) This statute was passed in 8 Henry VI. A.D. 1429 The complaint which it makes is well worth notice, and shows the reactionary tendencies of the time. The county elections had been made by "very great, outrageous, and excessive number of people dwelling within the same counties, of which most part was people of small substance, and of no value, whereof every of them pretended a voice equivalent, as to such elections to be made, with the most worthy knights and esquires dwelling within the same counties" To hinder "the manslaughters, riots, batteries, and divisions," which were likely to take place—it is not said that they had taken place—no one is to be allowed to vote who has not "free land or tenement to the value of forty shillings by the year at the least above all charges" It is also provided that both the electors and the elected are to be actually resident in the county. The original French is worth quoting :—

"Item come lez eleccions dez Chivalers des Countees esluz a venir as parlements du Roi en plusours Countees Dengleterre, orde tarde ount este faitz par trop graunde & excessive nombre dez gents demurrantz deinz mesmes les Countes, dount la greindre partie estoit par gentz sinon de petit avoir ou de null valu, dount chescun pretende davoir voice equivalent quant a tielx eleccions faire ove les plius valantz chivalers ou esquiers demurrantz deins mesmes les Countes ; dount homicides riotes bateries & devisions entre les gentiles & autres gentz de mesmes les Countees verisemblablement sourdront & seront, si covenable remedie ne soit purveu en celle partie . Notre seigneur le Roy considerant les premisses ad pourveu & ordene par auctorite de cest

parlement que les Chivalers des Countes deins le Roialme Dengleterre, a esliers a venir a les parlementz en apres atenirs, soient esluz en chescun Counte par gentz demurrantz & receantz en icelles dount chescun ait frank tenement a le valu de xl s par an al meins outre les reprises; & que ceux qui seront ensy esluz soient demurrantz & receantz deins mesmes les Countes" Revised Statutes, i. 306.

The necessity of residence in the case of either electors or representatives was repealed by 14 Geo III. c. 58.

The statute goes on to give the Sheriff power to examine the electors on oath as to the amount of their property. It also gives the Judges of Assize a power foreshadowing that of our present Election Judges, that of inquiring into false returns made by the Sheriff.

Another statute of the same kind was passed later in the same reign, 23 Henry VI. A.D. 1444-5, from which it appears that the knights of the shire were ceasing to be in all cases knights in the strict sense, and that it was beginning to be found needful to fence them about with oligarchic restrictions

"Issint que lez Chivalers dez Counteez pour le parlement en après a esliers soient notablez Chivalers dez mesmez lez Counteez pour lez queux ils serront issint esluz, ou autrement tielx notablez Esquiers gentils homez del Nativite dez mesmez lez Counteez comme soient ablez destre Chivalers; et null home destre tiel Chivaler que estoise en la degree de vadlet et desouth." Revised Statutes, i. 346.

Every enactment of this kind bears witness to the growth of the power of the Commons, and to the endeavours of the people to make their representation really popular.

(60, p. 102) Take for instance the account given by the chronicler Hall (p. 253) of the election of Edward the Fourth.

"After the lordes had considered and weyghed his title and declaracion, they determined by authoritie of the sayd counsaill, for as much as kyng Henry, contrary to his othe, honor and agreement, had violated and infringed the order taken and enacted in the last Parliament, and also, because he was insufficient to rule the Realme, & inutile to the common wealth, & publique profite of the pore people, he was therefore by the aforesayed authoritie, depriued & deiected of all kyngly honor, & regall souereigntie. And incontinent, Edward erle of Marche, sonne and heyre to Richard duke of Yorke, was by the lordes in the sayd counsaill assembled, named, elected, & admitted, for kyng & gouernour of the realme; on which day, the people of the erles parte, beyng in their muster in sainct Ihons felde, & a great number of the substanciall citezens there assembled, to behold their order: sodaynly the lord Fawconbridge, which toke the musters, wisely declared to the multitude, the offences & breaches of the late agremente done & perpetrated by kyng Henry the vi. & demaunded of the people, whether they woulde haue the sayd kyng Henry to rule & reigne any lenger ouer them: To whome they with a whole voyce, aunswered, nay, nay. Then he asked them, if they would serue, loue, & obey the erle of March as their earthly prince & souereign lord. To which question they aunswered, yea, yea, crieng, king Edward, with many great showtes and clappyng of handes . . . . . The erle, . . . as kyng, rode to the church of sainct Paule, and there offered. And after *Te deum* song, with great solempnitie, he was conueyed to Westmynster, and there set in the hawle, with the scepter royall in his hand, where to all the people which there in a great number were assembled, his title and clayme to the croune of England, was declared by, ii. maner of ways: the firste, as sonne and heyre to duke Richard his father, right enheritor to the same; the

second, by aucthoritie of Parliament and forfeiture committed by, kyng Henry. Whereupon it was agayne demaunded of the commons, if they would admitte, and take the sayd erle as their prince and soueraigne lord, which al with one voice cried, yea, yea. . . . . On the morrow he was proclaymed kyng by the name of kyng Edward the. iiij. throughout the citie."

This was in Lent 1461, before the battle of Towton. Edward was crowned June 29th in the same year. The same chronicler describes the election or acknowledgement of Richard the Third, p. 372.

(61, p. 102.) One special sign of the advance of the power of Parliament in the fifteenth century was the practice of bringing in bills in the form of Statutes ready made Hitherto the Acts of the Commons had taken the form of petitions, and it was sometimes found that, after the Parliament had broken up, the petitions had been fraudulently modified. They now brought in bills, which the King accepted or rejected as they stood See Hallam, Middle Ages, ii. 222.

(62, p 103) Macaulay, i 38 "The knight of the shire was the connecting link between the baron and the shopkeeper. On the same benches on which sate the goldsmiths, drapers, and grocers who had been returned to Parliament by the commercial towns, sate also members who, in any other country, would have been called noblemen, hereditary lords of manors, entitled to hold courts and to bear coat armour, and able to trace back an honourable descent through many generations. Some of them were younger sons and brothers of great lords. Others could boast even of royal blood. At length the eldest son of an Earl of Bedford, called in courtesy by the second title of his father, offered himself as a candidate for a seat in the House of Commons, and his

Kyng and of the Lords of hys consayll nyghe abought hys p'sone. Sertyfyĩg yow that my seid Lady for her parte and syche as be of hyr consayll be most agreeabyll that bothe ye and all syche as be hyr fermors and teñntys and wellwyllers shold geve your voyse to a worchepfull knyght and on' of my Ladys consayll S^r^ John Paston whyche standys gretly in favore w^t^ my Lord Chamberleyn and what my seyd Lord Chamberleyn may do w^t^ the Kyng and w^t^ all the Lordys of Inglond I trowe it be not unknowyn to you most of eny on man alyve. Wherefor by the meenys of the seyd S^r^ John Paston to my seyd Lord Chamberleyn bothe my Lady and ye of the towne kowd not have a meeter man to be for yow in the perlement to have yo^r^ needys sped at all seasons. Wherefor I prey yow labor all syche as be my Ladys serũntts tennts and wellwyllers to geve ther voyseys to the seyd S^r^ John Paston and that ye fayle not to sped my Ladys intent in thys mater as ye entend to do hyr as gret a plesur as if ye gave hyr an C^li^ [100*l.*]. And God have yow in hys kepĩg. Wretyn at Fysheley the xx day of Septebyr.—J. ARBLASTER"

(63, p. 103.) On the effects of the reign of Charles the Fifth in Spain and his overthrow of the liberties of Castile, see the general view in Robertson, iii. 434, though in his narrative (ii. 186) he glorifies the King's clemency. See also the first chapter of the sixth book of Prescott's Philip the Second, and on the suppression of the constitution of Aragon by Philip, Watson, Philip the Second, iii 223.

The last meeting of the French States-General before the final meeting in 1789 was that in 1614, during the minority of Lewis the Thirteenth. See Sismondi, xiii. 342.

(64, p. 106.) The legal character of William's despotism I have tried to set forth almost throughout the whole of my fourth volume. See especially pp. 8, 617; but it is plain to

everyone who has the slightest knowledge of Domesday. Nothing can show more utter ignorance of the real character of the man and his times than the idea of William being a mere "rude man of war," as I have seen him called.

(65, p. 107.) On the true aspect of the reign of Henry the Eighth I have said something in the Fortnightly Review, September, 1871.

(66, p. 107.) Both these forms of undue influence on the part of the Crown are set forth by Hallam, Constitutional History, i. 45, ii. 203. "It will not be pretended," he says, "that the wretched villages, which corruption and perjury still hardly keep from famine [this was written before the Reform Bill, in 1827], were seats of commerce and industry in the sixteenth century. But the county of Cornwall was more immediately subject to a coercive influence, through the indefinite and oppressive jurisdiction of the stannary court. Similar motives, if we could discover the secrets of those governments, doubtless operated in most other cases."

In the same page the historian, speaking of the different boroughs and counties which received the franchise in the sixteenth century, says, "It might be possible to trace the reason why the county of Durham was passed over." And he suggests, "The attachment of those northern parts to popery seems as likely as any other." The reason for the omission of Durham was doubtless that the Bishoprick had not wholly lost the character of a separate principality. It was under Charles the Second that Durham city and county, as well as Newark, first sent members to Parliament. Durham was enfranchised by Act of Parliament, as Chester city and county—hitherto kept distinct as being a Palatinate—were by 34 & 35 Hen. VIII. c. 13. (Revised Statutes, i. 522.) Newark was enfranchised by a Royal

Charter, the last case of that kind of exercise of the prerogative. Hallam, ii. 204.

(67, p. 108.) I do not know what was the exact state of Old Sarum in 1265 or in 1295; but earlier in the thirteenth century it was still the chief dwelling-place both of the Earl and of the Bishop. But in the reign of Edward the Third it had so greatly decayed that the stones of the Cathedral were used for the completion of the new one which had arisen in the plain.

(68, p. 108) On the relations between Queen Elizabeth and her Parliaments, and especially for the bold bearing of the two Wentworths, Peter and Paul, see the fifth chapter of Hallam's Constitutional History, largely grounded on the Journals of Sir Simonds D'Ewes. The frontispiece to D'Ewes' book (London, 1682) gives a lively picture of a Parliament of those days.

(69, p. 109.) On the relations between the Crown and the House of Commons under James the First, see the sixth chapter of Hallam's Constitutional History, and the fifth chapter of Gardner's History of England from 1603 to 1616.

CHAPTER III.

(1, p 115) This was the famous motion made by Sir Robert Peel against the Ministry of Lord Melbourne, and carried by a majority of one, June 4, 1841. See May's Constitutional History, i. 158. Irving's Annals of our Times, 86.

(2, p. 116) This of course leaves to the Ministry the power of appealing to the country by a dissolution of Parliament, but, if the new Parliament also declares against them, it is plain that they have nothing to do but to resign office. In the case of 1841 Lord Melbourne dissolved Parliament, and, on the meeting of the new Parliament, an amendment to the address was carried by a majority of ninety-one, August 28, 1841. The Ministry therefore resigned.

(3, p. 119) This is well set forth by Sir John Fortescue, De Laudibus Legum Angliæ, cap. 36: "Neque Rex ibidem, per se aut ministros suos, tallegia, subsidia, aut quævis onera alia, imponit legiis suis, aut leges eorum mutat, vel novas condit, sine concessione vel assensu totius regni sui in parliamento suo expresso."

(4, p. 119) How very recent the establishment of these principles is will be seen by anyone who studies the history of the reign of George the Third in the work of Sir T. E May. Mr. Pitt, as is well known, kept office in defiance of repeated votes of the House of Commons, and at last, by a

dissolution at a well-chosen moment, showed that the country was on his side. Such conduct would not be deemed constitutional now, but the wide difference between the constitution of the House of Commons then and now should be borne in mind.

(5, p 119) Though the command of the Sovereign would be no excuse for any illegal act, and though the advisers of any illegal act are themselves responsible for it, yet there would seem to be no way provided for punishing an illegal act done by the Sovereign in his own person. The Sovereign may therefore be said to be personally irresponsible.

(6, p. 121.) See Macaulay, iv. 435. It should not be forgotten that writers like Blackstone and De Lolme say nothing about the Cabinet. Serjeant Stephen supplies the omission, ii. 447.

(7, p 121) The lowly outward position of the really ruling assembly comes out in some degree at the opening of every session of Parliament. But it is far more marked in the grotesque, and probably antiquated, ceremonies of a Conference of the two Houses. This comes out most curiously of all in the Conference between the two Houses of the Convention in 1688. See Macaulay, ii. 660

(8, p. 122.) See Note 56, Chapter ii

(9, p. 123) See Macaulay, iv. 437.

(10, p 124.) "Ministers" or "Ministry" were the words always used at the time of the Reform Bill in 1831-1832. It would be curious to trace at what time the present mode of speech came into vogue, either in parliamentary debates or in common speech.

Another still later change marks a step toward the

recognition of the Cabinet. It has long been held that a Secretary of State must always accompany the Sovereign everywhere. It is now beginning to be held that any member of the Cabinet will do as well as a Secretary of State. But if any member of the Cabinet, why not any Privy Councillor?

(11, p. 126) In February 1854 Mr. Cayley moved for a "Select Committee to consider the duties of the Member leading the Government business in this House, and the expediency of attaching office and salary thereto." The motion was withdrawn, after being opposed by Sir Charles Wood (now Viscount Halifax), Mr Walpole, and Lord John Russell (now Earl Russell). Sir Charles Wood described the post of Leader of the House as "an office that does not exist, and the duties of which cannot be defined." Mr. Walpole spoke of it as a "position totally unknown to the constitution of the country." Yet I presume that everybody practically knew that Lord John Russell was Leader of the House, though assuredly no one could have given a legal definition of his position. A discussion then followed between Mr. Walpole and Lord John Russell on the nature of ministerial responsibility. Mr. Walpole said that "members were apt to talk gravely of ministerial responsibility, but responsibility there is none, except by virtue of the office that a Minister holds, or possibly by the fact of his being a Privy Councillor. A Minister is responsible for the acts done by him; a Privy Councillor for advice given by him in that capacity. Until the reign of Charles the Second, Privy Councillors always signed the advice they gave; and to this day the Cabinet is not a body recognized by law. As a Privy Councillor, a person is under little or no responsibility for the acts advised by him, on account of the difficulty of proof." Lord John Russell "asked the House to pause before it gave assent to the constitutional doctrines laid down by Mr.

Walpole. He unduly restricted the responsibility of Ministers." . . . . "I hold," continued Lord John, "that it is not really for the business the Minister transacts in performing the particular duties of his office, but it is for any advice which he has given, and which he may be proved, before a Committee of this House, or at the bar of the House of Lords, to have given, that he is responsible, and for which he suffers the penalties that may ensue from impeachment."

It is plain that both Mr. Walpole and Lord Russell were here speaking of real legal responsibility, such responsibility as may be enforced by impeachment or other legal process, not of the vaguer kind of responsibility which is commonly meant when we speak of Ministers being "responsible to the House of Commons." This last is enforced, not by legal process, but by such motions as that of Sir Robert Peel in 1841, or that of the Marquess of Hartington in June 1859

I have made my extracts from the Spectator newspaper of February 11, 1854.

(12, p 127.) We read (Anglia Sacra, i. 335) of Æthelric, Bishop of the South-Saxons at the time of the Conquest, as "vir antiquissimus et legum terræ sapientissimus." So Adelelm, the first Norman Abbot of Abingdon, found much benefit from the legal knowledge of certain of his English monks (Chronicon Monasterii de Abingdon, ii. 2), "quibus tanta secularium facundia et præteritorum memoria eventorum inerat, ut cæteri circumquaque facile eorum sententiam ratam fuisse, quam edicerent, approbarent." The writer adds, "Sed et alii plures de Anglis causidici per id tempus in abbatia ista habebantur quorum collationi nemo sapiens refragabatur." But knowledge of the law was not an exclusively clerical accomplishment; for among the grounds for the election of King Harold himself, we find (de Inventione Sanctæ Crucis

Walthamensis, p. 25, Stubbs) that one was "quia non erat eo prudentior in terra, armis strenuus magis, legum terræ sagacior." See Norman Conquest, ii 538, iv. 366, 478 The professional lawyers seem first to show themselves in the days of Randolf Flambard, and they were then largely, if not wholly, clerks. "Nullus clericus nisi causidicus," says William of Malmesbury, iv. 314.

(13, p. 129) On the growth of the lawyers' theory of the royal prerogative, and its utter lack of historical standing-ground, I must refer once for all to Allen's Inquiry into the Rise and Growth of the Royal Prerogative in England

(14, p 131.) See Norman Conquest, ii. 330.

(15, p. 133.) The history of this memorable revolution will be found in Lingard, iii. 392—405, and the legal points are brought out by Hallam, Middle Ages, ii 214. He remarks that "In this revolution of 1399 there was as remarkable an attention shown to the formalities of the constitution, allowance made for the men and the times, as in that of 1688"; and, speaking of the device by which the same Parliament was brought together again, he adds, "In this contrivance, more than in all the rest, we may trace the hand of lawyers" The official version entered on the rolls of Parliament by command of Henry will be found in Walsingham, ii 234—238. Some care seems to be used to avoid using the name of Parliament in the account of the actual proceedings. It is said just before, "Rex perductus est Londonias, conservandus in Turri usque ad Parliamentum proximo celebrandum" And the writs are said to have been sent "ad personas regni qui de jure debeant interesse Parliamento" But when they have come together ("quibus convenientibus"), care seems to be taken to give the Assembly no particular name, till, in the Act of Richard's deposition, the actors are described

as "pares et proceres regni Angliæ spirituales et temporales, et ejus regni communitates, omnes status ejusdem regni repræsentantes;" and in the Act of Henry's election they are described as "domini tam spirituales quam temporales, et omnes regni status." In the Act of deposition Richard's resignation of the Crown is recorded, as well as his particular crimes and his general unfitness to wear it, all which are classed together as reasons for his deposition. The actual formula of deposition runs thus:—"propter præmissa, et eorum prætextu, ab omni dignitate et honore regiis, *si quid dignitatis et honoris hujusmodi in eo remanserit*, merito deponendum pronunciamus, decernimus, et declaramus; et etiam simili cautela deponimus" They then declare the throne to be vacant ("ut constabat de præmissis, et eorum occasione, regnum Angliæ, cum pertinentiis suis, vacare"). Henry then makes his challenge, setting forth that strange mixture of titles which is commented on in most narratives of the event, and the Estates, without saying which of Henry's arguments they accept, grant the kingdom to him ("concesserunt unanimiter ut Dux præfatus super eos regnaret"). A more distinct case of deposition and election can hardly be found; only in the words which I have put in italics there seems a sort of anxiety to complete, by the act of deposition, any possible defect in Richard's doubtless unwilling abdication.

The French narrative by a partisan of Richard (Lystoire de la Traison et Mort du Roy Richart Dengleterre, p. 68) gives, in some respects, a different account. The Assembly is called a Parliament, and the Duke of Lancaster is made to seat himself on the throne at once. Then Sir Thomas Percy "cria 'Veez Henry de Lenclastre Roy Dengleterre.' Adonc crierent tous les seigneurs prelaz et *le commun de Londres*, Ouy Ouy nous voulons que Henry duc de Lencastre soit nostre Roy et nul autre." For "le commun de Londres"

there are other readings, "le commun," "le commun Dangleterre et de Londres," and "tout le commun et conseil de Londres."

(16, p. 133) It should be remembered that Charles the First was not deposed, but was executed being King. He was called King both in the indictment at his trial and in the warrant for his beheading.

(17, p. 134.) Monk raised this point in 1660. See Lingard, viii. 607.

(18, p. 134.) Lingard (viii. 612) remarks that at this particular moment "there was no court to influence, no interference of the military to control the elections" The Convention may therefore be supposed to have been more freely elected than most Parliaments.

(19, p 134.) The Long Parliament had dissolved itself, and had decreed the election of its successor. By the Act 13 Charles II. (Revised Statutes, i. 733) the Long Parliament is "declared and adjudged to be fully dissolved and determined;" but it is not said when it was dissolved and determined. See also Lingard, ix. 5; Hallam's Constitutional History, ii. 21, where the whole matter is discussed, and it is remarked that "the next Parliament never gave their predecessors any other name in the Journals than 'the late assembly.'"

(20, p. 134.) See Norman Conquest, i. 365, 366.

(21, p 135.) See the discussion on the famous vote of the Convention Parliament in Hallam, Constitutional History, ii 260—263; Macaulay, ii. 623 Hallam remarks that "the word 'forfeiture' might better have answered this purpose than 'abdication' or 'desertion,'" and he adds, "they proceeded not by the stated rules of the English government, but

by the general rights of mankind. They looked not so much to Magna Charta as the original compact of society, and rejected Coke and Hale for Hooker and Harrington." My position is that there is no need to go to what Hallam calls "higher constitutional laws" for the justification of the doings of the Convention, but that they were fully justified by the precedents of English history from the eighth century to the fourteenth.

The Scottish Estates, it should be remembered, did not shrink from using the word "forfeited." Macaulay, iii. 285.

(22, p. 135) See the Act 1 William and Mary "for removing and preventing all Questions and Disputes concerning the Assembling and Sitting of this Present Parliament" (Revised Statutes, ii. 1). It decrees "That the Lords Spiritual and Temporal, and Commons convened at Westminster the two and twentieth day of January, in the year of our Lord one thousand six hundred eighty-eight, and there sitting on the thirteenth day of February following, are the two Houses of Parliament, and so shall be and are hereby declared enacted and adjudged to be to all intents, constructions, and purposes whatsoever, notwithstanding any fault of writ or writs of summons, or any defect of form or default whatsoever, as if they had been summoned according to the usual form." The whole history of the question is given in Macaulay, iii 27—31. The whole matter is summed up in the words (iii. 27), "It was answered that the royal writ was mere matter of form, and that to expose the substance of our laws and liberties to serious hazard for the sake of a form would be the most senseless superstition. Wherever the Sovereign, the Peers spiritual and temporal, and the Representatives freely chosen by the constituent bodies of the realm were met together, there was the essence of a Parliament" In earlier times it might perhaps have been held that there

might be the essence of a Parliament even without the Sovereign.

(23, p. 136.) Macaulay, iv. 535. "A paper had been circulated, in which the logic of a small sharp pettifogger was employed to prove that writs, issued in the joint names of William and Mary, ceased to be of force as soon as William reigned alone. But this paltry cavil had completely failed. It had not even been mentioned in the Lower House, and had been mentioned in the Upper only to be contemptuously overruled." From my point of view the cavil is certainly paltry, but it is hard to see that it is more paltry than the others.

(24, p. 138.) This is by the Acts 7 and 8 Will. III. c. 15; 6 Anne, c. 7; and 39 Geo. III. c. 127. See Stephen's Commentaries, ii. 380. Blackstone's reasoning runs thus: "This dissolution formerly happened immediately upon the death of the reigning sovereign; for he being considered in law as the head of the parliament (caput principium, et finis), that failing, the whole body was held to be extinct. But the calling a new parliament immediately on the inauguration of the successor being found inconvenient, and dangers being apprehended from having no parliament in being, in case of a disputed succession it was enacted," etc. By the Reform Act of 1867 the whole tradition of the lawyers was swept away.

(25, p. 139.) I have said something on this head in Norman Conquest, i. 94, but the whole thing should be studied in Allen's great section on the Tenure of Landed Property; Royal Prerogative, 125—155. It is to Allen that the honour belongs of showing what *bookland* and *folkland* really were.

(26, p. 139.) I have given a few examples in Norman Conquest, i. 589. Endless examples will be found in Kemble's Codex Diplomaticus.

(27, p. 140) See the complaints on this head as late as the time of William the Third, in Macaulay, iv. 646. On the Acts by which the power of the Crown in this matter is restrained, see Stephen's Commentaries, ii. 520. See also May's Constitutional History, i. 229.

(28, p 140) See May, i. 234—248.

(29, p 141) This is discussed in full by Allen, Royal Prerogative, 143—145. The great example is the will of King Ælfred. See Codex Diplomaticus, ii. 112, v. 127.

(30, p. 143) See May, i. 249; Allen, 154—155, who remarks: "By a singular revolution of policy there was a recurrence in the late reign to the ancient policy of the Anglo-Saxons. The crown lands were virtually restored to the public, while the King obtained the right of acquiring landed property by purchase, and of bequeathing it by will like a private person."

(31, p. 144.) Edward the First was the earliest King whose reign is dated from a time earlier than his coronation. He was out of the kingdom at his father's death, and his right was acknowledged without opposition. But even in this case there was an interregnum The regnal years of Edward the First are not reckoned from the day of his father's death, but from the day of his funeral, when Edward was acknowledged King, and when the prelates and nobles swore allegiance to him. See the account in the Worcester Annals, Annales Monastici, iv. 462, and the documents in Rymer, i part ii. 497. See also the remarks of Allen, 46, 47. The doctrine that there can be no interregnum seems to have been put into shape to please James the First, and it was of course altogether upset by the great vote of 1688. Now of course there is no interregnum; not indeed from any mysterious

prerogative of the Crown, but simply because the Act of Settlement has entailed the Crown in a particular way.

(32, p. 144.) On this see Norman Conquest, i. 107, 263, 625. See the same question discussed in quite another part of the world in Herodotus, vii. 3.

(33, p. 146.) The helpless way in which Blackstone himself wrote was perhaps pardonable in the dark times in which he lived. But it is really too bad when lawyer after lawyer, in successive editions, gives again to the world the astounding rubbish which in Blackstone's day passed for early constitutional history. In Kerr's edition of Blackstone, published in 1857, vol. i. p. 180, I find repeated, without alteration or comment, the monstrous assertion of Blackstone: "I believe there is no instance wherein the Crown of England has ever been asserted to be elective, except by the regicides at the infamous and unparalleled trial of King Charles I." And in Serjeant Stephen's Commentaries (1853), which are not a mere edition of Blackstone, but "New Commentaries partly founded on Blackstone," the same words are found in vol. ii. p. 403, only leaving out the epithet "unparalleled," which might with truth have been allowed to stay. In another place (iv. 481–2) we read how "after the Saxon government was firmly established in this island" came "the subdivision of the kingdom into a heptarchy, consisting of seven independent kingdoms, peopled and governed by different clans and colonies" It seems then that in 1857 there were learned gentlemen who believed in a kingdom subdivided into a heptarchy. But when, in the next page, Blackstone tells us how Ælfred set about "to new-model the constitution, to rebuild it on a plan that should endure for ages," and goes on in the usual style to attribute everything whatever to Ælfred personally, this seems to have been too much, and the editor gives an extract from Kemble by

way of correction. One wonders that, if he had read Kemble at all, he had not learned a little more from him. It is amusing again when Blackstone tells us (i. 186, Kerr), "From Egbert to the death of Edmund Ironside, a period of above two hundred years, the Crown descended regularly through a succession of fifteen princes, without any deviation or interruption . save only"—all the cases where it did not descend regularly according to Blackstone's notions of regularity. But it is almost more amusing when Serjeant Stephen (ii. 410) throws Blackstone's exceptions, which are at least historical facts, into a note, and gives us instead as his own exceptions, the statement, very doubtful and, if true, utterly irrelevant, that Æthelstan and Eadmund Ironside were illegitimate (see Norman Conquest, i. 669—673). We of course get the usual talk about the usurpations of Harold, Stephen, John, and Henry the Fourth, and about the rights of Eadgar and Arthur of Britanny. For the former we get a quotation from Matthew Paris, to whom it would have been more to the purpose to go for the great speech of Archbishop Hubert. The comments on the succession of John (i. 189, Kerr) are singularly amusing, but too long to quote.

One point however must be mentioned. To prove the strictly hereditary nature of the succession, Blackstone (i. 189, Kerr) quotes the Statute of 25 Edward III. "that the law of the Crown of England is, and always hath been, that the children of the King of England, whether born in England or elsewhere, ought to bear the inheritance after the death of their ancestors." We are bound to suppose that these learned lawyers had read through the statute which they quoted; but it is wonderful that they did not see that it had nothing whatever to do with fixing the hereditary succession of the Crown. The original text (Revised Statutes, i. 176) runs thus:—

"La lei de la Corone Dengleterre est, et ad este touz jours

ticle, que les enfantz des Rois Dengleterre, *queu part qils soient neez en Engleterre ou aillors*, sont ables et deivent porter heritage, apres la mort lour auncestors"

The object of the statute is something quite different from what any one would think from Blackstone's way of quoting it. The emphatic words are those which are put in italics. The object of the statute is to make the King's children and others born of English parents beyond sea capable of inheriting in England. As far as the succession to the Crown is concerned, its effect is simply to put a child of the King born out of the realm on a level with his brother born in the realm; that is, in the view of our older Law, to give both alike the preference due to an Ætheling.

(34, p 147) It is as well to explain this, because most people seem to think that a man becomes a Bishop by virtue of receiving a private letter from the First Lord of the Treasury. We constantly see a man spoken of as Bishop of such a see, and his works advertised as such, before a single ecclesiastical or legal step has been taken to make him so.

(35, p 147) See Norman Conquest, iii 44, 623.

(36, p 148) The succession of a grandson, which first took place in England in the case of Richard the Second, marks a distinct stage in the growth of the doctrine of hereditary right. It involves the doctrine of representation, which is a very subtle and technical one, and is not nearly so obvious or so likely to occur in an early state of society as the doctrine of nearness of kin. No opposition was made to the accession of Richard the Second, but there seems to have been a strong notion in men's minds that John of Gaunt sought to displace his nephew In earlier times, as the eldest and most eminent of the surviving sons of Edward the Third,

John would probably have been elected without any thought of the claims of young Richard.

(37, p 148.) In Yorkist official language the three Lancastrian Kings were usurpers, and Duke Richard was *de jure*, though not *de facto*, King. Henry the Sixth is, in the Act of 1461, "Henry Usurpour, late called King Henry the sixt." The claim of the House of York was through an intricate female descent from Lionel Duke of Clarence, a son of Edward the Third older than John of Gaunt. A claim so purely technical had never been set forth before in England, though the crown of England had once been claimed on yet more subtle grounds by Lewis the son of Philip Augustus, in his character of husband of Blanche of Castile. See the pleading of his ambassadors before Innocent III. in Roger of Wendover, iii. 371. But we may be quite sure that such a claim would not have been thought to have much weight, if Duke Richard had not been, by another branch, descended from Edward the Third in the male line, and if he had not moreover been the ablest and most popular nobleman in the country.

(38, p. 149) A prospective election before the vacancy of course hindered any interregnum. In this case the formula "Le Roi est mort; vive le Roi," was perfectly true. The new King was already chosen and crowned, and he had nothing to do but to go on reigning singly instead of in partnership with his father, just as William went on reigning alone after the death of Mary. In Germany this took place whenever a King of the Romans was chosen in the lifetime of the reigning Emperor. In France, under the early Kings of the Parisian dynasty, the practice was specially common, and the fact that there seldom or never was an interregnum doubtless helped much to make the French Crown become, as it did, the most strictly hereditary crown in Christendom.

In England, the only distinct case of a coronation of a son during the lifetime of his father was that of Henry the son of Henry the Second, known as the younger King, and sometimes as Henry the Third. In earlier times we get something like it in the settlement of the Crown by Æthelwulf, with the consent of his Witan (see Old-English History, 105, 106), but it does not seem clear whether there was in this case any actual coronation during the father's lifetime. If there was not, this would be the case most like that of Duke Richard The compromise placed the Duke in the same position as if he had been Prince of Wales, or rather in a better position, for it might be held to shut out the need of even a formal election on the King's death.

(39, p. 149.) See note 59 on Chapter II.

(40, p. 150) See Norman Conquest, iii 623.

(41, p. 150.) See Hallam's Constitutional History, i. 8. It is to be noticed that the settlement enacts that "the inheritance of the Crown, &c., should remain in Henry the Seventh and the heirs of his body for ever, and in none other." This would seem to bar a great number of contingent claims in various descendants of earlier Kings As it happens, this Act has been literally carried out, for every later Sovereign of England has been a descendant of the body of Henry the Seventh.

(42, p. 151.) The will of Henry the Eighth is fully discussed by Hallam, i. 34, 288, 294; Lingard, vi. 213 There are two Acts of Henry's reign bearing on the matter. In the earlier one, 28 Henry VIII. c. 7, the Crown is entailed on the King's sons by Jane Seymour or any other wife; then on the King's legitimate daughters, no names being mentioned; the Act then goes on to say, "your Highnes shall have full and plenar power and auctorite to geve despose appoynte assigne

declare and lymytt by your letters patentes under your great seale or ells by your laste Will made in wrytynge and signed with your moste gracious hande, at your onely pleasure from tyme to tyme herafter, the imperiall Crowne of this Realme and all other the premisses thereunto belongyng, to be remayne succede and come after your decease and for lack of lawfull heires of your body to be procreated and begoten as is afore lymytted by this Acte, to such person or persones in possession and remaynder as shall please your Highnes and according to such estate and after such maner forme facion ordre and condicion as shalbe expressed declared named and lymitted in your said letters patentes or by your said laste will." The later Act, 35 Henry VIII. c. 1, puts Henry's two daughters, Mary and Elizabeth, into the entail, but in a very remarkable way. The Acts declaring their illegitimacy are not repealed, nor is the legitimacy of either of them in any way asserted; in fact it is rather denied when the preamble rehearses that "The king's Majesty hath only issue of his body lawfully begotten betwixt his Highness and his said late wife Queen Jane the noble and excellent Prince Edward." The Act then goes on to enact that, although the King had been enabled to "dispose" the Crown "to any person or persons of such estate therein as should please his Highness to limit and appoint," yet that, in failure of heirs of the body of either the King or his son, "the said imperial Crown and all other the premises shall be to the Lady Mary the King's Highness daughter, and to the heirs of the body of the same Lady Mary lawfully begotten, with such conditions as by his Highness shall be limited by his letters patents under his great seal, or by his Majesty's last will in writing signed with his gracious hand." Failing Mary and her issue, the same conditional entail is extended to Elizabeth and her issue. The power of creating a remainder after the issue of Elizabeth of course remained with Henry, and he exercised it in

favour of the issue of his younger sister Mary. Mary and Elizabeth therefore really reigned, not by virtue of any royal descent, but by virtue of a particular entail by which the Crown was settled on the King's illegitimate daughters, as it might have been settled on a perfect stranger. It was an attempt on the part of Edward the Sixth to do without parliamentary authority what his father had done by parliamentary authority which led to the momentary occupation of the throne by Lady Jane Grey. Mary, on her accession, raked up the whole story of her mother's marriage and divorce, and the Act of the first year of her reign recognized her as inheriting by legitimate succession. The Act passed on the accession of Elizabeth, 1 Eliz. c. 3, is much vaguer. It enacts "that your majestie our sayd Sovereigne Ladye ys and in verye dede and of most meere right ought to bee by the Lawes of God and the Lawes and Statutes of this Realme our most rightfull and lawfull Sovereigne liege Ladie and Quene; and that your Highness ys rightlye lynyallye and lawfully discended and come of the bloodd royall of this Realme of Englande in and to whose princely person and theires of your bodye lawfully to bee begotten after youe without all doubte ambiguitee scruple or question the imperiall and Royall estate place crowne and dignitie of this Reallme withe all honnours stiles titles dignities Regalities Jurisdiccons and preheminences to the same nowe belonging & apperteyning arre & shalbee most fully rightfully really & entierly invested & incorporated united & annexed as rightfully & lawfully to all intentes construccons & purposes as the same were in the said late Henrye theight or in the late King Edwarde the Syxte your Highness Brother, or in the late Quen Marye your Highnes syster at anye tyme since thacte of parliament made in the xxxvth yere of the reigne of your said most noble father king Henrye theight."

It should be remembered that Sir Thomas More, though

he refused to swear to the preamble of the oath prescribed by the Act of Supremacy, was ready to swear to the order of succession which entailed the Crown on the issue of Anne Boleyn. On his principles the issue of Anne Boleyn would be illegitimate; but he rightly held that Parliament could settle the Crown upon anybody, on an illegitimate child of the King or on an utter stranger; to the succession therefore he had no objection to swear.

For a parallel to the extraordinary power thus granted to Henry we have to go back to the days of Æthelwulf.

(43, p. 151.) The position of the daughters of Henry the Eighth was of course practically affected by the fact that each was the child of a mother who was acknowledged as a lawful wife at the time of her daughter's birth. There was manifest harshness in ranking children so born with ordinary illegitimate children; but in strictness of law, as Henry married Anne Boleyn while Katharine of Aragon was alive, the daughter of Katharine and the daughter of Anne could not both be legitimate. The question was, which marriage was lawful. It should also be remembered that the marriage of Anne Boleyn was declared void, and her daughter declared illegitimate, on grounds—whatever they were—which had nothing to do with the earlier question of the marriage and divorce of Katharine.

(44, p. 152.) See Hallam, i. 129; Lingard, vi. 239, 243. The Act 13 Elizabeth, c. 1, declares it to be treason "yf any person shall in any wyse holde and affyrme or mayntayne that the Common Lawes of this Realme not altred by Parlyament, ought not to dyrecte the Ryght of the crowne of England, or that our said sovrayne Ladye Elizabeth the Quenes Majestie that nowe is, with and by the aucthoritye of the Parlyament of Englande is not able to make Lawes and

Statutes of suffycyent force and valyditie to lymit and bynd the Crowne of this Realme, and the Descent Lymitacion Inheritaunce and Government thereof." The like is the crime of "whosoever shall hereafter duryng the Lyef of our said Soveraigne Ladye, by any Booke or Worke prynted or written, dyrectly and expresly declare and affyrme at any tyme before the same be by Acte of Parlyament of this Realme established and affyrmed, that any one particular person whosover it be, is or ought to be the ryght Heire and Successor to the Queenes Majestie that nowe is (whome God longe preserve) except the same be the naturall yssue of her Majesties bodye."

This statute may possibly be taken as setting aside the claims of the House of Suffolk: but, if so, it sets aside the claims of the House of Stewart along with them.

(45, p. 152.) James's right was acknowledged by his own first Parliament, just as the claims of other Kings who entered in an irregular way had been. It should be marked however that he was crowned before he was acknowledged. The Act 1 Jac. I. c. 1, declares that "immediatelie upon the Dissolution and Decease of Elizabeth late Queene of England, the Imperiall Crowne of the Realme of England, and of all the Kingdomes Dominions and Rights belonging to the same, did by inherent Birthright and lawfull undoubted Succession, descend and come to your moste excellent Majestie, as beinge lineallie justly and lawfullie next and sole Heire of the Blood Royall of this Realme as is aforesaid" It is worth noticing that in this Act we get the following definition of Parliament; "this high Court of Parliament, where all the whole body of the Realm and every particular member thereof, either in Person or by Representation (upon their own free elections), are by the Laws of this Realm deemed to be personally present."

(46, p 152) The fact that James the First, a King who came in by no title whatever but what was given him by an Act of Parliament passed after his coronation, was acknowledged without the faintest opposition, is one of the most remarkable things in our history. Hallam (i. 294) remarks that "there is much reason to believe that the consciousness of this defect in his parliamentary title put James on magnifying, still more than from his natural temper he was prone to do, the inherent rights of primogenitory succession, as something indefeasible by the legislature; a doctrine which, however it might suit the schools of divinity, was in diametrical opposition to our statutes." Certainly no opposition can be more strongly marked than that between the language of James's own Parliament and the words quoted above from 13 Eliz c. 1. But see the remarks of Hallam a few pages before (i. 288) on the kind of tacit election by which it might be said that James reigned. "What renders it absurd to call him and his children usurpers? He had that which the flatterers of his family most affected to disdain—the will of the people; not certainly expressed in regular suffrage or declared election, but unanimously and voluntarily ratifying that which in itself could surely give no right, the determination of the late Queen's Council to proclaim his accession to the throne."

(47, p. 152.) See the letters sent throughout England by the revolted Barons in 1215, just before the signing of the Great Charter. The King's partizans are exhorted "regem perjurum ac *baronibus rebellem* relinquentes simul cum eis pro libertatibus et pace regni immobiles starent et efficacitur decertarent"

(48, p. 153.) Whitelocke's Memorials, 367 "The heads of the charge against the King were published by leave, in this

form : That Charles Stuart, being admitted King of England, & therein trusted with a limited power, to govern by, & according to the Laws of the Land, & not otherwise, & by his trust being obliged, as also by his Oath, & office to use the power committed to him, for the good & benefit of the people, & for the preservation of their Rights and Privileges," etc.

At an earlier stage (365) the President had told the King that the Court "sat here by the Authority of the Commons of England : & all your predecessours, & you are responsible to them." The King answered "I deny that, shew me one Precedent." The President, instead of quoting the precedents which were at least plausible, told the prisoner that he was not to interrupt the Court. Earlier still the King had objected to the authority of the Court that "he saw no Lords there which should make a Parliament, including the King, & urged that the Kingdom of England was hereditary, & not successive" The strong point of Charles's argument undoubtedly was the want of concurrence on the part of the Lords Both Houses of Parliament had agreed in the proceedings against Edward the Second and Richard the Second.

It is a small point, but it is well to notice that the description of the King as Charles Stewart was perfectly accurate Charles, the son of James, the son of Henry Stewart Lord Darnley, really had a surname, though it might not be according to Court etiquette to call him by it. The helpless French imitators in 1793 summoned their King by the name of "Louis Capet," as if Charles had been summoned by the name of "Unready," "Bastard," "Lackland," "Longshanks," or any other nickname of an earlier King and forefather.

I believe that many people fancy that Guelph or Welf is a surname of the present, or rather late, royal family.

(49, p. 154) The Act 1 William and Mary (Revised Statutes, ii. 11) entailed the Crown "after their deceases," "to the heires of the body of the said princesse & for default of such issue to the Princesse Anne of Denmarke & the heires of her body & for default of such issue to the heires of the body of the said Prince of Orange" It was only after the death of "the most hopeful Prince William Duke of Gloucester" that the Crown was settled (12 and 13 Will III. c. 2; Revised Statutes, ii. 94) on "the most excellent Princess Sophia Electress and Dutchess Dowager of Hannover, daughter of the most excellent Princess Elizabeth, late Queen of Bohemia, daughter of our late sovereign lord King James the First of happy memory," "and the heirs of her body being protestants"

(50, p. 155.) We hardly need assurance of the fact, but if it were needed, something like an assurance to that effect was given by an official member of the House during the session of 1872. At all events we read in Sir T. E May (ii. 83): "The increased power of the House of Commons, under an improved representation, has been patent and indisputable. Responsible to the people, it has, at the same time, wielded the people's strength. No longer subservient to the crown, the ministers, and the peerage, it has become the predominant authority in the state." But the following strange remark follows: "But it is characteristic of the British constitution, and *a proof of its freedom from the spirit of democracy*, that the more dominant the power of the House of Commons,—the greater has been its respect for the law, and the more carefully have its acts been restrained within the proper limits of its own jurisdiction"

ὦ δημοκρατία, ταῦτα δῆτ' ἀνασχετά;

Has Mr. Grote lived and written so utterly in vain that a writer widely indeed removed from the vulgar herd of

according to the laws. In the end the kingdom changed into a Federal Republic. See History of Federal Government, i. 151.

(52, p. 157) It is simply frivolous in the present state of England to discuss the comparative merits of commonwealths and constitutional monarchies with any practical object. Constitutional monarchy is not only firmly fixed in the hearts of the people, but it has some distinct advantages over republican forms of government, just as republican forms of government have some advantages over it. It may be doubted whether the people have not a more real control over the Executive, when the House of Commons, or, in the last resort, the people itself in the polling-booths (as in 1868 and 1874), can displace a Government at any moment, than they have in constitutions in which an Executive, however much it may have disappointed the hopes of those who chose it, cannot be removed before the end of its term of office, except on the legal proof of some definite crime. But in itself, there really seems no reason why the form of the Executive Government should not be as lawful a subject for discussion as the House of Lords, the Established Church, the standing army, or anything else. It shows simple ignorance, if it does not show something worse, when the word "republican" is used as synonymous with cut-throat or pickpocket. I do not find that in republican countries this kind of language is applied to the admirers of monarchy; but the people who talk in this way are just those who have no knowledge of republics, either in past history or present times. They may very likely have climbed a Swiss mountain, but they have taken care not to ask what was the constitution of the country at its foot. They may even have learned to write Greek iambics and to discuss Greek particles; but they have learned nothing from the treasures of wisdom taught by Grecian history from Herodotus to Polybios.

I have discussed the three chief forms of Executive Government, the constitutional King and his Ministry, the President, and the Executive Council, in the last of my first series of Historical Essays.

(53, p. 159) Iliad, i 250:—

> τῷ δ' ἤδη δύο μὲν γενεαὶ μερόπων ἀνθρώπων
> ἐφθίαθ', οἵ οἱ πρόσθεν ἅμα τράφεν ἠδ' ἐγένοντο
> ἐν Πύλῳ ἠγαθέῃ, μετὰ δὲ τριτάτοισιν ἄνασσεν.

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